

(29,804)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 494

L. B. NORTON, BETTIE, KIZZIE GOUGE, OKCHUMPULLA,  
ET AL., APPELLANTS,

vs.

CHEPARNEY LARNEY, A MINOR, AND BENNIE GREEN,  
HIS LEGAL GUARDIAN

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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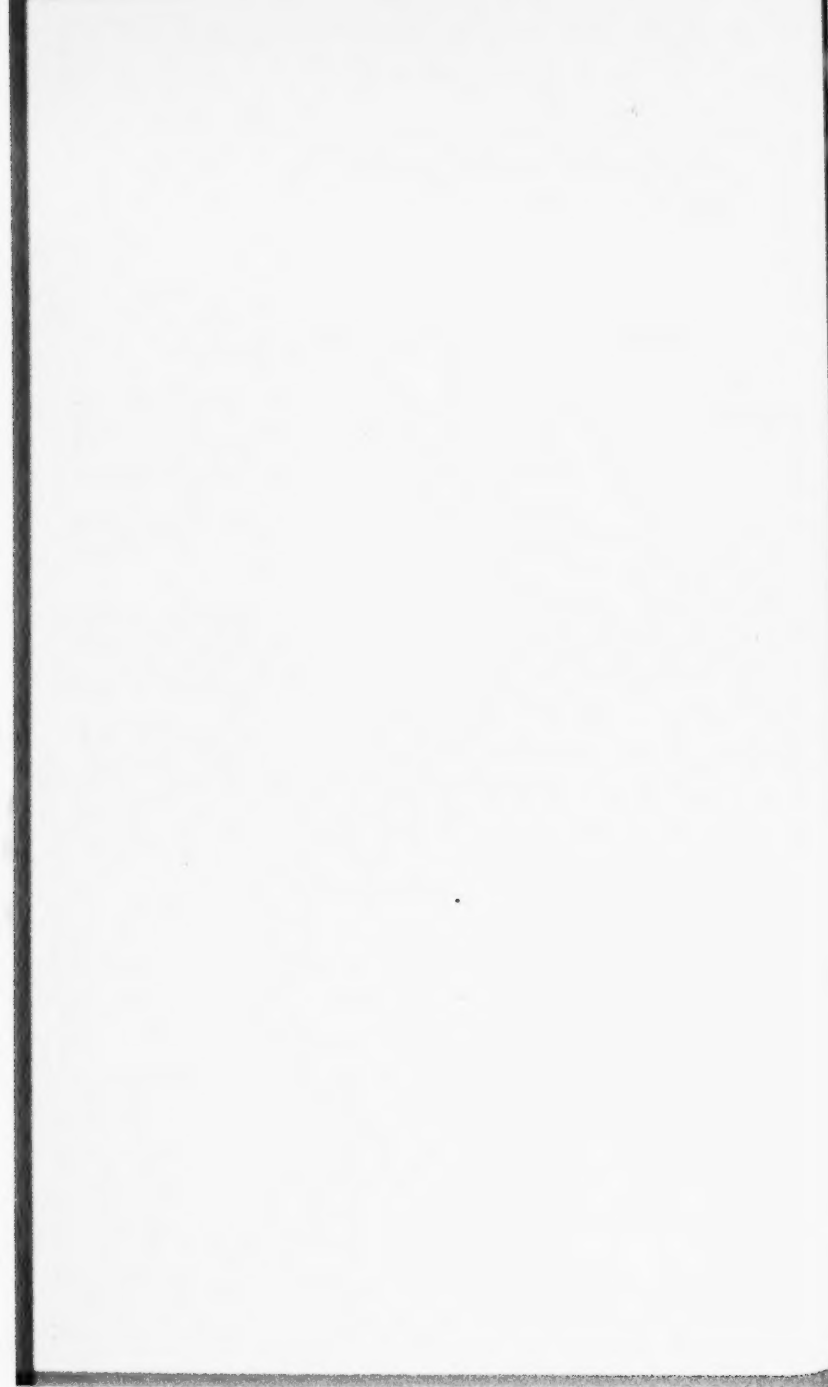
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## CAPTION IN U. S. CIRCUIT COURT OF APPEALS

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1922, of said Court, before the Honorable William S. Kenyon, Circuit Judge, and the Honorable Wilbur F. Booth and the Honorable Tillman D. Johnson, District Judges.

Attest: E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. [Seal of United States Circuit Court of Appeals, Eighth Circuit.]

Be it Remembered that heretofore, to-wit: on the thirtieth day of August, A. D. 1922, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein L. B. Norton, et al., were Appellants, and Cheparney Larney, a minor, by Bennie Green, his legal guardian, was Appellee, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:





IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA.

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PLEAS AND PROCEEDINGS BEFORE THE HONORABLE R. L. WILLIAMS, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

CHEPARNEY LARNEY, A MINOR, BY HIS LEGAL  
GUARDIAN, BENNIE GREEN, PLAINTIFF,

In Equity

vs.

No. 2658.

L. B. NORTON, BIG JACK AND BETTIE, DEFENDANTS.

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L. B. NORTON, BETTIE, KIZZIE GOUGE, OKCHUMPUL-  
LA, SUCKCHO, SAM AND ALBERTA GOUGE, MINORS,  
BY ERNEST GOUGE, THEIR LEGAL GUARDIAN, AND  
NOGWEE, BY JIM HILL, HIS LEGAL GUARDIAN,

APPELLANTS,

vs.

CHEPARNEY LARNEY, A MINOR, BY BENNIE GREEN.  
HIS LEGAL GUARDIAN, APPELLEES.

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In the United States District Court in and for the Eastern  
District of Oklahoma—Term of 19—

Cheparney Larney, a Minor, by His Legal Guardian, Bennie  
Green, Plaintiff, vs. L. B. Norton, Big Jack and Bettie,  
Defendants. No. 2658-Eq.

Bill of Complaint.

Cheparney Larney a citizen of the State of Oklahoma and  
the Eastern District of Oklahoma residing in McIntosh Coun-

ty in said state, brings this bill against L. B. Norton a citizen of the State of Oklahoma residing in Okmulgee County, and Big Jack and Bettie citizens of the State of Oklahoma and residing in McIntosh County, Oklahoma, all residents of the Eastern District of Oklahoma;

And thereupon your petitioner complains and says; that he is a full-blood Indian and enrolled as such on the Creek Tribal Roll Number N. B. C. 1287; that he is a male infant under the age of twenty-one years and that Barney Green is his duly appointed and acting guardian, having been appointed as guardian by the County Court of McIntosh County, Oklahoma.

That said petitioner received as his distributive share of the lands of the Creek Nation as follows:

The East Half of the Northwest Quarter of Section Twenty-nine (29) and the Northeast Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter of Section Thirty (30), Township Seventeen (17) North and Range Nine (9) East, in Creek County, Oklahoma. Containing 160 acres more or less according to the Government Survey thereof.

That he went into possession of the above described land by authority of the several treaties between the Creek Nation and the Government of the United States and the Laws of Congress that have been enacted dealing with the land and individuals of the Creek Nation, soon after said allotment was made and has been in open and notorious and peaceable possession of the same since the time of receiving his allotment patents from the Creek Nation up to the present time and is now in open, notorious and peaceable possession of the same.

Your complainant further states that Big Jack who was enrolled as a full-blood on the Creek Tribal Rolls, opposite Roll Number 8291, and Bettie who is enrolled as a full-blood on the Creek Tribal Rolls, opposite Roll Number 8292 claim that Cheparney Larney is their son and that he is dead, and they acting on such beliefs, executed a deed to the above described allotment of Cheparney Larney, and executed a petition asking for the approval of said deed, which said petition was filed in the County Court of McIntosh County and by reason thereof an order was obtained approving the said deed to L. B. Norton; that the said L. B. Norton filed said deed for record in the office of the County Clerk of Creek County, Oklahoma, against the above described land and allotment of this complainant Cheparney Larney.

Your complainant further states that Big Jack and Bettie above mentioned and described are not his father and mother but that his father is Jaccob Larney sometimes known as Jacob Tiger and is enrolled as a full-blood Creek Indian on the Creek Tribal Rolls, opposite Roll Number 7968 and that his mother is Bittie Larney sometimes known as Lucy Green and enrolled as a full-blood Creek Indian on the Creek Tribal Rolls, opposite Roll Number 8361.

To the end that your complainant may obtain the relief to which he is entitled in the premises he now prays the court to grant him due to process by subpoenas directed to the said L. B. Norton, Big Jack and Bettie, the defendants hereinbefore named, requiring and commanding each of them to appear herein and answer the several allegations in this, your complainant's bill contained.

Your complainant further prays that upon the final hearing, it be ordered and decreed that the land above described is the allotment of Cheparney Larney your complainant herein and that your complainant Cheparney Larney is the identical person entitled to said allotment and the identical person who was allotted on said above described land and who was enrolled on the Creek Tribal Rolls, opposite Roll Number N. B. C. 1287 as a full-blood Indian; and that the deed executed by Big Jack and Bettie, hereinbefore described, to L. B. Norton is null and void. And that the claim of said Big Jack and Bettie of any right, title or interest in and to the above described land be denied and that the deed above mentioned from Big Jack and Bettie to L. B. Norton be cancelled as a cloud upon the title of your complainant and that Big Jack and Bettie and L. B. Norton be forever barred and enjoined from asserting any claim, right, title or interest against this complainant in and to the above described land.

Complainant further prays for such other and further relief as may be just and equitable.

CLARK NICHOLS,  
Attorney for Complainant.

Filed Jun. 2, 1920. W. V. McClure, Clerk.

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Answer.

Come now the defendants, L. B. Norton, Big Jack and Bettie, and for their answer to the bill of complaint filed in this cause say:

They deny that Cheparney Larney, the plaintiff in this suit, is the Chaparney Larney enrolled as stated in the peti-

tion, but on the other hand state that Chaparney Larney, the son of the defendants, Big Jack and Bettie, is dead and that the defendants, Big Jack and Bettie, as the father and mother of the said Chaparney Larney, were at the time of the sale and deed as mentioned in the petition the legal owners of the premises as described in said petition.

They deny that the plaintiff in this case ever went into possession or ever had any possession whatever of the land sued for in this case and that if any possession was taken that the same was wrongfully and unlawfully obtained as against defendants, Big Jack and Bettie.

Defendants neither admit nor deny the enrollment of Big Jack and Bettie as to the numbers being correct as set out in the petition but state that said Big Jack and Bettie were duly enrolled upon the Creek Tribal Rolls, and admit that they executed the deed to L. B. Norton and that same was approved by the County Court of McIntosh County.

All other allegations in the bill of complaint not above specially admitted are here and now generally denied and as much so as if each specific allegation was set up and specifically denied.

HORNER & SWAN,  
Attorneys for Defendants.

Filed Jun. 29, 1920. W. V. McClure, Clerk.

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### Order.

Pursuant to the application of the defendants herein to file an amended answer in this cause, it is ordered that said defendants be permitted to file their amended answer.

R. L. WILLIAMS, Judge.

Filed Jan. 7, 1922, as of Jan. 2, 1922. W. V. McClure, Clerk.

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### Amended Answer.

Come now the defendants, L. B. Norton, Big Jack and Bettie, and by permission of this court file this, their Amended Answer to plaintiff's Bill of Complaint.

Defendants deny that the plaintiff is the person who was enrolled by the Commission to the Five Civilized Tribes under the name of Cheparney Larney, and opposite N. B. C. (New Born Creek) Roll No. 1287; and deny that said plaintiff received as his distributive share of the Creek tribal

lands the allotment described in his petition, and further deny that he is entitled to possession of the same.

Defendants further deny that the plaintiff in this action is the Cheparney Larney described on New Born Creek Census Card No. 1010, with Roll No. 1287.

Defendants state that if plaintiff went into possession of said allotment and is now in possession of the same, he has held the same wrongfully from these defendants for the reason that said land allotted under said roll number to Cheparney Larney, was intended for and made to a deceased son of the defendants, Big Jack and Bettie, in pursuance of the Acts of Congress of March 3, 1905, and various other Congressional acts prior thereto, creating the Commission to the Five Civilized Tribes, and providing for the enrollment of the members thereof and the distribution of Creek lands thereto.

Defendants further state that said deceased child was born in the year 1904 and died about the month of November, 1906; that during the lifetime of said child, proceedings were commenced by the said Commission to the Five Civilized Tribes to have said child enrolled and much data and information was gathered and presented to the said Commission from time to time. That on February 23, 1907, said Commission, after considering all the data and information before collected and presented, prepared a written decision which described said Cheparney Larney as the son of Big Jack and Bettie, who are identified in said decision by their Creek roll numbers as they appear upon the final rolls of said Creek Tribe, to-wit: No. 8291 and No. 8292, respectively.

Defendants further state that all of said data, together with the written decision of the Commission to the Five Civilized Tribes, is now on file in the office of said Commission at Muskogee, Oklahoma.

Defendants admit the execution and approval of the deed by Big Jack and Bettie to L. B. Norton, referred to in plaintiff's complaint, and state that they, the said Big Jack and Bettie, were the owners of said land at the time and had a lawful right to convey the same.

Defendants pray for a decree of this court finding that Cheparney Larney was the son of the defendants, Big Jack and Bettie, and that upon his death they inherited the land described in plaintiff's complaint and allotted to him; and that the conveyance of the same to the defendant L. B. Norton, vested the said L. B. Norton with title thereto. And further pray that the defendant, L. B. Norton, be decreed to be the

owner of said land and entitled to possession thereof and that his title be forever quieted in him, and for costs.

G. R. HORNER,

Attorney for Defendants.

Filed in open court Jan. 2, 1922. W. V. McClure, Clerk.

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Reply to Defendant's Amended Answer.

Come now the plaintiff, and for reply to the amended answer of defendants filed in this case says:

That he denies each and all of the material allegations set forth and alleged in defendant's amended answer.

REUBELT & NICHOLS,

Attorneys for Plaintiffs.

Filed in open court Jan. 3, 1922. W. V. McClure, Clerk.

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Decree.

Now on this 3rd day of January, 1922, this cause came on to be heard in its regular order, the plaintiff being represented by Reubelt & Nichols, as his attorneys, and the defendants L. B. Norton, Big Jack and Bettie, by their attorney G. R. Horner; and the court having heard the evidence and argument of counsel and being fully advised in the premises, finds the issues in favor of the plaintiff, and against the defendants, and the court finds the facts generally in favor of the plaintiff; and the court finds; that Cheparney Larney, the plaintiff, is a full-blood Indian enrolled as such on the Creek Tribal rolls opposite Roll No. N. B. C. 1287; and that as such full-blood Indian he received as his distributive share of the lands of the Creek Nation or Tribe of Indians an allotment described in his petition, to-wit:

The East Half of the Northwest Quarter of Section Twenty-nine (29), and the Northeast Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter of Section Thirty (30), Township Seventeen (17) North, Range Nine (9) East, situate in Creek County, State of Oklahoma, containing One hundred Sixty (160) acres, more or less, according to the Government survey thereof.

And the court finds; that the said Cheparney Larney, the plaintiff, is the legal owner in possession of the said land and that his title thereto is valid and perfect and superior to any

right or interest claimed by the defendants, and that defendants, or either of them, have no right, title nor interest in and to the said premises. To all of which findings defendants except.

It is therefore, ordered, adjudged, and decreed by the court; that the title and possession of said plaintiff, in the said premises be, and the same is hereby forever settled and quieted in the plaintiff, as against all claims or demands by the said defendants, or either of them, and those claiming, or to claim under them or any of them:

That the deed executed by Big Jack and Bettie to L. B. Norton, which was approved by the County Court of McIntosh County, and recorded in Book——at Page——in the office of the County Clerk of Creek County, Oklahoma, and all other deeds and documents in said chain of title claimed by defendants, be and the same are hereby cancelled and removed as clouds on the title of the said plaintiff, Cheparney Larney, in and to the said described premises.

And it is further ordered, decreed and adjudged that said defendants, L. B. Norton, Big Jack and Bettie, and those claiming through, by or under them or any of them be, and they are hereby perpetually enjoined and forbidden to claim any right, title, interest, or estate in and to said premises by virtue of said deed, hostile or adverse to the possession and title of plaintiff herein; and that said defendants, L. B. Norton, Big Jack and Bettie, and those claiming under them or any of them, are hereby perpetually forbidden and enjoined from beginning any suit to disturb the said plaintiff in his said possession and title to said premises, from setting up any claim or interest adverse to the title of plaintiff herein; and from disturbing plaintiff in his peaceable and quiet enjoyment of said described premises. And it is further, decreed that plaintiff have and recover his costs from defendants. To which order and decree [] except.

R. L. WILLIAMS, Judge.

O. K.—Reubelt & Nichols.

Filed in open court Jul. 1, 1922, as of Jan. 3, 1922. W. V. McClure, Clerk.

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Motion of Heirs of Big Jack to Be Substituted as Parties Defendant.

Come now Suckcho, Sam and Alberta Gouge, minors by Ernest Gouge, their legal guardian, Bettie, Okchumpulla,



Kizzie Gouge, and Nogowee, or Nokomis Jackson, a minor, by Jim Hill, his legal guardian, and respectfully show to the court that heretofore, to-wit, on the 12th day of March, 1922, the defendant in this cause, Big Jack, died, intestate, in the Eastern District of Oklahoma; that said Big Jack left no will, and no administrator or other personal representative has been appointed for his estate; that these movants are the legal heirs of said Big Jack, and they pray this cause as to the said Big Jack be revived, and that they be substituted as parties defendant in his place and stead in order that they may perfect their appeal from the decree heretofore rendered in this cause against the said Big Jack.

G. R. HORNER,  
GIBSON & HULL,  
Solicitors for Movants.

United States of America,  
State of Oklahoma, County of Muskogee.—ss.

Personally appeared before me, the undersigned, an officer authorized by law to administer oaths, Ernest Gouge, of lawful age, who being first duly sworn, on oath states: That he has read the foregoing motion and is familiar with the facts therein stated, and that said facts are true.

EARNEST GOUGE.

Subscribed and sworn to before me this 30th day of June, 1922. Mayme Hightower, Notary Public. My commission expires June 2, 1924. (Seal)

Filed in open court Jul. 1, 1922. W. V. McClure, Clerk.

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### Order.

Now on this 1st day of July, A. D. 1922, this cause comes on to be heard upon the application of the heirs at law of the defendant, Big Jack, suggesting his death of record, and praying that they be substituted as parties defendant herein, and that said cause be revived, and the court being duly advised in the premises finds that reasonable notice of said application has been given to the solicitor of record for the plaintiffs herein, and that Big Jack, a defendant against whom final decree herein was rendered, died on March 12, 1922, intestate, and that no executor, administrator, or other personal representative of his estate has been appointed.

It, is therefore, ordered and adjudged that said cause be revived as to the said Big Jack, and that the heirs of said Big Jack, to-wit, Bettie, Kizzie Gouge, Okchumpulla, and Sam



Gouge, and Suckcho and Alberta Gouge, minors, and their legal guardian Ernest Gouge, and Nogowee, or Nokomis Jackson, a minor, and his legal guardian, Jim Hill, be substituted as parties defendant in the place of said defendant, Big Jack.

R. L. WILLIAMS. Judge,

O. K.—Reubelt & Nichols.

Filed in open court Jul. 1, 1922. W. V. McClure, Clerk.

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### Statement of the Evidence.

Be it remembered, that on the 3rd day of January, 1922. this cause coming on for hearing at Muskogee, Oklahoma, before the Honorable R. L. Williams, United States Judge. and the plaintiff being represented by Mr. Horace Rheubelt and Mr. Clark Nichols of Eufaula, Oklahoma, and the defendants being represented by Messrs. Horner & Swan of Okmulgee, Oklahoma, and counsel for the plaintiff and the defendants announcing to the court that they were ready to proceed with the trial of this cause, the following proceedings were had, to-wit:

Whereupon, Mr. Jasper Bell, was duly sworn according to law to act as interpreter.

Whereupon, CHEPARNEY LARNEY, being duly sworn according to law, was called to the witness chair and was examined by the aid of the interpreter and testified as follows, to-wit: My name is Cheparney Larney. I live near Hannah. Don't know just exactly how long I have lived there. For over twenty years. I am 19 years old; will be twenty on my next birthday. My father's name was Jacob Larney. My mother's name is Petey Larney. Bennie Green is my guardian. He is my grandfather. I remember my father.

The Court: When was the enrollment made?

Mr. Nichols: Last order made February 23, 1907.

The Court: What does the record show the allottee's age was?

Mr. Nichols: Shows the allottee was one year old in 1905.

Mr. Horner: We will just agree the record may be introduced at this time.

Thereupon plaintiff offers Exhibit No. 1, to which no objection was offered, with the exception of the notation made on the census card which defendants say is not a part of the enrollment record, as follows: "See affidavit of Jacob Jacob

and Bennie Green showing that Lucy Green, No. 8361 is the mother of number 1, and not Bettie at number 8292—some initials."

Mr. Nichols: We don't care about the initials.

The Court: Very well, that part is excluded.

I know a man in my neighborhood by the name of Big Jack. I know a woman by the name of Bettie. Bettie and Big Jack are husband and wife. They live about a mile from my house. My father, Jacob Larney, and my mother, Bettie Larney, lived about a mile from Big Jack. I know Okchumpulla, Big Jack's child.

### Cross Examination.

I don't know when my next birthday is going to be. I am going to be 19. My father's name was Jacob Tiger, and my mother's name besides Petey was Lucy Tiger. My name is Articee. I went to school at Bacone College a few years ago, and went by the name of Artis Tiger. Near my house is a small school house, and Okchumpulla and I went to school there. I went by the name of Artis Tiger there. My parents and grandfather called me Cheparney when I was a little boy. I don't know when they commenced to call me Articee. I have one younger brother and a sister. My brother's name is Joe Tiger. We are both sons of Jacob Tiger. My mother is Bennie Green's daughter, and her name is Lucy Green.

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Whereupon, JASPER BELL, the interpreter, was examined, and testified as follows: The word Cheparney translated into English means Little Boy. Larney means yellow or green. Kalarney means yellow-head. It doesn't mean anything like Cheparney.

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Whereupon, BEN GREEN, a witness on behalf of the plaintiff, being first duly sworn according to law, was examined, and testified as follows: My name is Ben Green. I was enrolled under the name of Henaha Fixico. I guess I am 57 years old, but am not sure. I was raised in and around Hannah neighborhood and have lived there a long time. I knew a man in that neighborhood by the name of Jacob Larney or Jacob Tiger. I knew a woman there by the name of Petey or Petey Larney. She was my daughter. Jacob Larney was her husband. They had three children born to them. Their names were Chebon Larney, Joe Larney and one died in infancy without name. Joe Larney and Cheparney are now living. I am guardian for both of them. As such guardian I

have leased Cheparney Larney's lands for agricultural and oil purposes. Plaintiff's exhibits 2 and 3 are, one is a deed for 120 acres and the other is on the homestead. It is Cheparney Larney's land. The first time I saw them Jacob Larney, father of Cheparney Larney, received them and turned them over to me. Jacob Larney died going on four years ago. I knew an Indian named Alex Posey. I saw him in my neighborhood about the time Cheparney Larney was about a year old. At that time I was a member of a group of Indians opposed to the work of the Dawes Commission who were trying to allot the land. I did not see Alex Posey at Jacob Larney's home, but he told me that he came by; came and stopped and went by. I know an Indian by the name of Bry or Jacky Thlocco, and his wife, whose name is Betty. I never heard of her having any other name. I have known Big Jack forty years. The Indians called him Jakey Thlocco. (The interpreter, Jasper Bell, in answer to a question says that the Creek word "Thlocco" means large or big). On account of his size the Indians called him Jakey Thlocco, and white people called him Big Jack. (It was conceded that this Indian was enrolled as Big Jack, his roll number being 8291, about 1899. It was not conceded that he was never enrolled as Jacob Larney, defendants' solicitor stating he didn't know what the proof would show.) Jacob Larney lived about not quite a mile from Big Jack. Big Jack and Bettie lived about a mile from Jacob Larney and Petey Larney, and both raised families in the same neighborhood. Jacob Larney died about 1916. He didn't know just how many years had passed since the first time he heard that Big Jack made some claim to the allotment of Cheparney Larney, but Jacob Tiger told him that Big Jack had told him that Cheparney was not his boy; that his boy was named Okseetka. (It is conceded that the wife of Jacob Larney was enrolled as Lucy Green, is on the land now as Lucy Green, and is identified as the daughter of Bennie Green; and the wife of Big Jack is enrolled as Bettie, her roll number being 8292. It is further admitted that Bennie Green, as guardian of Cheparney Larney, appeared in the County Court of McIntosh County at the time of the purchase of this land from Big Jack and Bettie by L. B. Norton, and put on testimony to show that this was the plaintiff's land and that plaintiff was not dead.)

#### Cross Examination.

The word "Cheparney" might apply to any little boy among the Creek people. Before they gave them any name they might call them that. (It is admitted that the plaintiff has two names, the one given him by the Department at the time of the enrollment, and the other name given him by his

grandfather when starting him to school, to-wit, Artisee Tiger.) Big Jack and Bettie had three children; one named Okchumpulla; the smallest one was named Okseetka, the next one they called it by two names, one was Okchumpulla and the others called him Larney or Cheparney. They called him Kalarney, and now they call him Cheparney. He is alive and his name is Okchumpulla. Okchumpulla and Kalarney is one and the same boy. (It is admitted that Big Jack was the father of Nicey and Lucinda and Tecumseh and Kizzie). Witness has three children living. Their names are Peetie Larney, Jeanetta Green, Siah Green. Peetie is the one enrolled as Lucy Green. He doesn't know her roll number. Alex Posey came out in that neighborhood and went to the various houses to find these children, but he doesn't know whether he went to Big Jack's house or not. He knows Okchumpulla. Big Jack's boy younger than Okchumpulla, was two or three years younger. He did not talk very plain and was about two feet high.

#### Redirect.

Big Jack had three boys. The oldest one was named Tecumseh; the next one Okchumpulla, and the next one Okseetka. Witness has been a very close neighbor of Big Jack and Bettie's for the last 40 years. Lived not quite a mile apart. He knew no other boys which they had except the three named. Tecumseh and Okseetka is dead. Tecumseh lived to be a man and married and had children. Cheparney Larney, witness' grandson, was older than Okseetka. He guesses about five years, but would not be certain. Okseetka had just commenced to walk when he died.

#### Cross Examination.

He didn't know who informed him that Big Jack was claiming this land, but Jacob Tiger told him that Big Jack told him Cheparney Larney was not my boy and the deed was turned over to me. That was before witness was appointed guardian for this boy and while Jacob Tiger was alive. It has been quite awhile ago.

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J. H. HILL, witness on behalf of the plaintiff, being first duly sworn testified as follows: My name is Jim Hill. Am a full-blood Creek Indian, enrolled as such. Live at Eufaula. Lived close to Eufaula before the town of Hannah was built. Have been in that neighborhood since I was a young man. Was a member of council for Hillabee Canadian Town in 1900. Was Town King. Bettie, wife of Big Jack, belonged to Hillabee Canadian, and so did Big Jack. Jacob Larney belonged to Tulledegee Town. Witness knew both Big Jack

and Jacob Larney and knew them a long time. Knew the family of Big Jack. He only knew two of his boys: Tecumseh and Okchumpulla. He did not know the other boy, but heard he had a boy by the name of Okseetka. Peetey was the name of the mother of the plaintiff. She was the wife of Jacob Larney. William Barnett was Town King at the time Lucy Green was enrolled. When I became Town King I received from the Department the allotment certificate for Lucy Green. I had a big bunch of allotment certificates, Big Jack's folks and others and Lucy Green's, and altogether I got a big bunch of those papers. I made inquiry about who Lucy Green was and talked with William Barnett about it. He said she was Bennie Green's daughter. And I delivered the allotment certificate to this woman Peetey Larney. William Barnett said he had enrolled her as Lucy Green. I have known plaintiff a long time and the name Cheparney Larney is all I have known him by.

#### Cross Examination.

I heard him called Articee Tiger in the trial at Eufaula. I don't know whether he went to school at Bacone College and the district school down there under that name. Someone told me that Big Jack and Bettie had a younger child than Okchumpulla. It was Tom Red who told me. He said they don't remember the child's name very well, but thought it was Okseetka, and said they called it Cheparney, Cheparney Larney. That this child was also called Cheparney Larney. Tom Red told me that I think in 1906, in the summer. He is in the hall here. He was not a council member. I got him to help me enroll that day. And he told me in 1906 Big Jack and Bettie had a child younger than Okchumpulla and that was Okseetka. I had nothing to do with this young boy, Cheparney Larney, whoever he is. I know about Alex Posey being down in that country looking up the newborn Indians. I never helped any on that.

#### Redirect.

Alex Posey called me several times up to Eufaula and I came and helped him put some of the young people on the roll.

---

JOSEPH PIGEON, witness on behalf of the plaintiff, being duly sworn, testified as follows: My name is Joseph Pigeon. I am thirty years old. I live seven miles from Hannah. Have lived in and around Hannah 29 years. I know the family of Big Jack and Bettie. I know Bennie Green. I know Cheparney Larney and Okchumpulla. Okchumpulla is Big Jack's son. Cheparney Larney is Peetey Larney's son and

Bennie Green's grandchild. I know Tecumseh, he is Big Jack's son, Big Jack had another boy besides Okchumpulla and Tecumseh, whose name was Okseetka. He had no other boys. Okseetka has been dead a long time. I knew Cheparney Larney when he was a little boy and knew Oskeetka at the same time. Okseetka was about a foot and a half or two feet high when he died. He was not strong enough to walk and he could not talk plain. At that time Cheparney Larney was about five years old. I belong to Okchiye Town.

#### Cross Examination.

When this boy I know, Cheparney Larney, was small he was known as Articee Tiger. The boys who played with him called him that. He was small when he was called Cheparney Larney. I am thirty years old. When this boy went to school down in the country they called him Artis Tiger. I never heard Okseetka called any other name. I never knew of his being called Kalarney Cheparney. The father of this boy whom I call Cheparney Larney was Jacob Larney. I knew Jacob Larney in his lifetime.

Plaintiff then offered in evidence plaintiff's Exhibits 4, 5, and 6.

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Whereupon LUCY GREEN, a witness on behalf of the plaintiff, being first duly sworn, testified as follows: My white folks name is Lucy, and my given name is Peetey. I don't know how old I am. My father's name is Bennie Green. and is also named Henaha Fixico. My husband's name is Jacob Tiger. He was known as Jacob Larney. I am sometimes known as Peetey Larney. I have three children, two living and one dead. The two living are named Joe Kalarney and Cheparney Larney. Cheparney Larney was the boy who testified here awhile ago. Jacob was the father of these two. Jacob and I were living at my father's house when this boy Cheparney Larney was born. That was near Hannah. Near a mile, but I don't know just how far from the place where Big Jack and Bettie lived. I don't know that I know all of the boys that were born to Bettie and Big Jack, but I know some that were living and some that died. I know three boys that they had. Their names were Tecumseh, Okchumpulla and Okseetka. They might have had some more boys, but I don't know anything about them. I have lived within a mile of Big Jack and Bettie all of my life. Jacob Larney tried to have my children enrolled. I never made any effort to get myself enrolled.

## Cross Examination.

Someone came to the house; I don't know what his name was, but they told me he was the man that enrolled the children. My oldest boy's name is Cheparney Larney. My other boy's name is Joe Tiger. They have the same father. I explain why one was called Joe Tiger and the other Cheparney Larney because the Commissioners give the name of Cheparney Larney. He had not been called Cheparney Larney before the Commissioner gave him the name. Cheparney was all he was called. Before he was enrolled he was called Articee and Cheparney. I don't think he was known as Articee Tiger before he was enrolled. That is the name now. I don't know when he got it. It has been quite awhile. He was sometimes called that before enrollment, and also Cheparney. Cheparney means little boy, or little boy Tiger. I would call any little boy that until he was given a name. My name is Lucy Green, sometimes called Peetey. I have never been called Bettie.

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Whereupon plaintiff offers in evidence exhibits 4, 5 and 6, and also plaintiff's exhibits 2 and 3, to which there was no objections. Plaintiff also offered in evidence plaintiff's exhibit 7; admitted without objection. Plaintiff thereupon offered in evidence plaintiff's exhibits 8, 9, 10 and 11, to which the defendant objected for the reason that they are instruments purporting to appoint a guardian for Cheparney Larney and the petition and order making an oil and gas lease on the said land and the oil and gas lease itself, for the reason they are transactions taken place since the completion of the enrollment records and are not competent evidence in this action and would not serve to determine the identity. Whereupon it was admitted that the plaintiff was in possession of the land at the time that suit was brought and still is in possession, though defendants claim they are in the unlawful possession. Thereupon the exhibits 8, 9, 10 and 11 were withdrawn. Thereupon plaintiffs offered in evidence plaintiff's exhibit 12, which was admitted without objection, except that the consideration of the exhibit was objected to unless it was proven that the letter was actually received by the party whom plaintiff claimed to be the father of Cheparney Larney.

The Court: This is the record. Of course it is only a record to show what was done by the Commission, but there is no evidence to show that Bettie, wife of Big Jack, received it, and it will not be considered for that purpose. The court will rule that it does not have that effect.

Thereafter plaintiff offered in evidence plaintiff's ex-



hibits 13, 14, 15 and 16, which were admitted without objection. Thereupon plaintiff rested.

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Whereupon THOMAS RED, a witness upon behalf of defendants, being first duly sworn, testified as follows: I am called Thomas Red. I live three miles east of Hannah. I am well acquainted with Big Jack and his wife, Bettie. I got acquainted with them a little before the Civil War. I now live about two miles from them and lived at the same place at the time of enrollment. Big Jack lived at the same place. I know their children. They had three boys. The oldest one is called Chedock Hooker. The English name is Tecumseh Jackson. The next boy we call Okchumawn. That is the same as Okchumpulla. The next boy's name they call Cheparney Larney. I don't know whether he had any other. The Indians keep no records and I can't say just as to the time when he was born. He is now dead. He may have been called Kalarney, but all the name I ever heard of was Cheparney Larney. Cheparney means little boy. Kalarney means his head is yellow or green. It means a yellow-headed boy. The hair of this boy was light; kind of yellow. J. M. Hill and myself enrolled some of the children in the Hannah neighborhood. The Ernest children, the children of Ernest Gouch. He was a son-in-law to Big Jack. I saw this little boy of Big Jack's and Bettie's. I know Alex Posey. He was working in that neighborhood for the Dawes Commission in enrolling. I did not see him at Big Jack's house. This boy of Big Jack's called Cheparney was living at the time Alex Posey was in that neighborhood. He died as nearly as I can estimate it, in the year 1906. I know Jacob Tiger's wife. Her name was Peetey. I don't know of any other name for her.

#### Cross Examination.

Soon after the close of the Civil War I was brought back to the Hannah neighborhood and have been there ever since. I have lived within two miles of Big Jack since the Civil War and now I am living a mile and three-quarters. I said he had three boys. The oldest named Tecumseh, the next named Okchumpulla, and the next a little boy called Kalarney or Cheparney Larney. I never heard the name Okseetka. I am sure Big Jack and Bettie never had but three boys. I know Jacob Larney for over thirty years. I don't know about how long ago it was he died. It might be about four or five years, but I have no record. His wife's name was Peetey. I never called her Peetey Larney, but she was the wife of Jacob Larney and was called Peetey Larney. Big Jack's wife was never called anything to my knowledge except Bettie. Jacob Larney was



known in that community also as Jacob Tiger. When he was a pretty good size boy I got acquainted with him and the people were then calling him just Jacob.

Redirect.

I am not related to Big Jack or Bettie.

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Thereupon GEORGE SIMMONS, a witness called by defendants, was first duly sworn, and testified as follows: My name is George Simmons. I live near Hannah. I know the defendants Big Jack and Bettie. Have known them for 26 years. I live six miles from them. I know their children. They had three boys. There was one Tecumseh, the one they call Timmy; and one is called Okchumpulla; and the third child is called Kalarney, Cheparney Larney. Cheparney Larney was about four years old. I saw him in 1904 and also in 1905, and at that time the boy was wearing a dress. I don't know exactly when he died, but it was between 1906 and 1907. He was a somewhat yellow-head. Okchumpulla was yellow-headed when he was small, but he grew out of it. I knew Jacob Tiger, and knew two of their children. One called Articee and the other Joe. Articee is the same boy who appeared here as a witness in this case. I lived in the neighborhood of Jacob Tiger and his family during his lifetime, within about six miles. I did not visit his place. The only name I ever heard for this boy was Articee. I never heard him called Cheparney Larney. Jacob's wife was named Pee-ty. That is the only name I know for her.

Cross Examination.

I said Big Jack and Bettie had three boys, the oldest one name Tecumseh and the middle one Okchumpulla. The smaller one was called Cheparney Larney. When children are small and the hair is light or yellow they call them according to the looks of the head up until they get older, and when they get older the hair looks different and at that time the color of the hair is the name they give them. That is the only reason I know that is the name he went by. Big Jack was never called Larney. I have known Bettie, his wife, to be known as Bettie Larnogee. I never heard that the youngest boy of Big Jack's was called Okseetka.

---

Whereupon CUTSEE HARJO, a witness for defendant, being first duly sworn, testified as follows: My name is Cutsee Harjo. I know the defendants Big Jack and Bettie. Have known them since the close of the Civil War. I live near

them. I know their children. They had three boys. Their names were Sadock Hoka, the English name for that being Tecumseh. Okchumpulla and Cheparney Larney. The last one was the youngest. He lived two or three years. He was living at the time of the final enrollment of the children of the Creeks. I know Alex Posey. Saw him in that neighborhood enrolling minors and newborn children. I don't think he went to the house of Big Jack and Bettie. He had something to do with the enrollment of the children of Big Jack and Bettie.

### Cross Examination.

I knew William Barnett in his lifetime. He was King or Chief of Hillabee Canadian Town. I remember Alex Posey coming down and going to William Barnett's house and asking him about the children to be enrolled in that town. I heard the interview when Alex Posey was questioning William Barnett. At that particular time I did not hear this particular conversation when William Barnett told him there was two children of Big Jack and Bettie, one named Okchumpulla and one named Okseetka, but since this question arose I heard it. There was some conversation concerning the question of Bettie and Big Jack's children between Alex Posey and William Barnett, but I did not pay any attention to it. I was with Eufaula Harjo, and we just gathered around out of idle curiosity to see what this man was doing. I suppose William Barnett was the only one that gave any testimony to Alex Posey at that time. I don't know how long after that this little boy of Big Jack's died. I have known Jacob Larney a long time, and am well acquainted with him. Peetey was his wife.

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Whereupon BIG JACK, one of the defendants, being first duly sworn, testified as follows: My name is Jackey Thlocco, but I hear that—it must be the white folks word—they call me Big Jack. I have been called that about 70 years. Bettie is my wife. I have had several boys, but all are dead except three; I mean I have only one boy living. His name is Okchumpulla. I had a boy younger than Okchumpulla. I don't know how much younger, but he was up pretty good size and could talk very plain. His name was Cheparney Larney. That was my way of calling him, and all the neighborhood knew him by that name. The old Indians called my wife Bettie Larney. My wife was called Bettie Larney after I married her ever since she was so high. I heard of Alex Posey being in the neighborhood to see about enrolling the small children. He never came to my place. I heard he was in the neighborhood trying to get the names of the small children

and some of the parents would not turn the name of the children in and he had to confer with the neighbors who might know. I did not turn the name of my children in. I did not have them enrolled. I suppose that some of the neighbors tell them the names and turn the names of the children in and by that the names appear on the different rolls.

#### Cross Examination.

I don't know myself but I was told my wife Bettie's father's name was Columbochee. I never saw him. I was only told that before she was born he was killed and after she was born her mother died while she was an infant. Her father was never in the Hannah neighborhood. I knew William Barnett. He was one time Town King. I don't know whether he told Alex Posey about my children and tried to get them enrolled. When Alex Posey was in that country trying to find these newborn Creeks I had three boys. They were Tecumseh, Okchumpulla and a little boy. I never knew of that little yellow-headed boy being called Okseetka. I don't know how much older Okchumpulla was than the little boy. Cheparney Larney was the youngest, and Okchumpulla is older than Cheparney Larney and also called Kalarney. I know Jacob Larney and his wife and have lived neighbors to them a long time.

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Whereupon BETTIE, being duly sworn, on oath testified as follows: My name is Bettie. I am the wife of Big Jack. When I was a girl I was called Bettie Larney. My father and my mother died before I knew them. Thomas Red's grandmother took me when I was small. I had one boy younger than Okchumpulla. He is dead. I think he was at least three years of age when he died, because he could talk very plain and could ask a white man for a chew of tobacco. His hair was yellow and his face was yellow. I don't know how old Okchumpulla was when this little boy was born because people keep the record of different ages but I did not. Okchumpulla had learned to walk and talk when Cheparney was born. I was told about Alex Posey being in the neighborhood to enroll the children, but I did not remember about him being to our house. The little boy was alive at that time. I don't know how old I am. I was carried away on a horse on the breaking out of the Civil War.

#### Cross Examination.

I know Jasper Bell, an interpreter. It is a fact that the first time I ever knew I had a claim to this land was in 1920 when Jasper Bell came to my house and talked to me about it.

I then signed some papers with Big Jack and then went to the County Court and sold the land for \$1600.00.

### Redirect.

I don't know the time when I first heard that Cheparney Larney was enrolled, but James Hill came to my house and told me that you have two boys on the roll and they got allotments. One of them is dead now. You could go ahead and lease this land and get some money out of it and help yourself with it. But we did not give any attention to that until this interpreter came and told us that this boy had received this allotment and the litigation started. It was several years ago that James Hill told me this. I knew he was enrolled before Jasper Bell came to my house, but I did not know where his land was until Jasper Bell told me.

---

BIG JACK, recalled, testified as follows: I was not at home when James Hill came to the old lady and told her you had two boys and they both got allotments, and one is dead, and you have been told that you cannot lease or rent this land, but that is not true; you can go ahead and rent it or lease it for oil purposes and get some benefit out of it. That was quite awhile ago. I don't know. Not very long after allotment.

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The Court: The question of the validity of the judgment of the Dawes Commission is not involved. The question before this court is whether the plaintiff who sues through his guardian in this case and who has been known by the name of Cheparney Larney is the identical person who was enrolled by the Commission to the Five Civilized Tribes as the son of Jacob Larney, Roll number—and of Peetie Larney, roll number—as contended on the part of plaintiff.

The records shows that Big Jack is enrolled under the Creek Dawes Roll number 8291 and Bettie, wife of Big Jack, appears opposite the Dawes Roll number 8292. The question here presented is as to an ambiguity in the record. The entire record of the enrollment comes up for the consideration of the court, not only the certificate of the enrollment but the record including the application and the evidence. That is the way I understand the law. Now application is made on April 24, 1905, by Alex Posey who presented to the Commission a list of children for whom application could not be made theretofore and he made the application as follows: "the child of Jacob Larney (or Green), Arbeka Tulledega Town, Bettie Larney (or Green), Hillabee Town." Now Jacob Larney who is enrolled as Jacob Tiger was from Arbeka Tulledega Town

# Plaintiff's Exhibit No. 1.

Residence Alama, St.

NEW BORN  
Bank Nation  
 Act of Congress Approved March 3rd, 1905 (Public No. 215)

Card No. 1010

Roll No.	Name	Age March 4 1905	Sex	Blood	Name of Father	Father's Roll No.	Name of Mother	Mother's Roll No.	Born
1517	Renny, Anthony	1	M	Full	Just Renny	1291	Ruth Renny	1292	Born in 1904

For Father's enrollment see Andrew Roll Card No. 3044

For Mother's enrollment see

Roll Card No. 3044

Remarks Application for enrollment of Nat received April 24-1905  
Name of father appears on list with No. 1291 as 1319 lock  
Name of mother " " " " No 1291 as 1319 lock  
July 23, 1907 - Division meeting Nat argued by Commissioner  
Book issued May 1-1907

March 31, 1920  
See affidavit of H. H. Fries or Berman  
born showing that Renny's name is 1291 in  
the matter of Nat and not Ruth at 1292  
1915.

Enrollment of No. 1289 Approved

By Secretary of Interior March 4, 1907

Approved July 21, 1907

Date June 20, 1905

Commissioner



and Lucy Green, I believe that is her name, being the name by which she is enrolled being also known as Bettie Green and as Peetie Larney appears to be the mother of the plaintiff, Cheparney Larney. Now Big Jack was not from Arbeka Tulled-ega Town. I believe from this evidence that this child, Okseet-ka, is the child that the defendants' witnesses referred to. I can't believe the defendants' witnesses who testified that Big Jack had a child a year or two or three years old and that prior to enrollment, prior to the time Alex Posey went down in that community he was called Cheparney Larney. This record undisputably shows that the Commission to the Five Civilized Tribes gave him that name and it is unreasonable evidence when it shows that prior to that time he was called in that community by the name that the Dawes Commission afterwards arbitrarily gave him. Now these old Indians, I don't find they committed perjury. This has been a long time and my experience as a lawyer tells me about matters remote that the recollection of witnesses is easily and erroneously refreshed sometimes as to remote matters. So I find generally in favor of plaintiff and a decree will be entered by this court removing the cloud from the title.

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Plaintiff's Exhibit No. 1.

[See insert for Creek New Born Census Card No. 1010.]

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Copy.

Department of the Interior,  
Commission to the Five Civilized Tribes.

April 24, 1905.

In the matter of the application for the enrollment of certain new borns as citizens of the Creek Nation.

Alex Posey, being duly sworn, testified as follows:

By Commission:

Q. What is your name, age and post office address?

A. Alex Posey, 31, Muskogee.

Q. Are you a citizen of the Creek Nation? A. Yes, sir.

Q. Got your land, have you? A. Yes, sir.

Q. You have been engaged recently in the field for the Dawes Commission securing evidence about Creek citizens or new borns? A. Yes, sir.

Q. Have you a list of children for whom application could not be made and about whom you have succeeded in obtaining some information? A. Yes, sir.



Q. You may state the conditions and the names of these children? You desire to make application for them?

A. Yes, sir.

Q. Name them.

A. Jaly Proctor, Weogufky Tom, Sukey Proctor, Weogufky Tom, have two children—one about three years old and one about six months old. Post office, Hanna, Indian Territory.

Jacob Bullet, about three years old, Parents; Maxey Bullet, Seminole, and Hannah Bullet; Hillabee. Post office, Hanna, Indian Territory.

Connie Hawkins, Hillabee Town, Sabella Hawkins, Okchiye, have two children—one about three years old and a younger child. Post office, Hanna, Indian Territory.

Willie Fisher, Hickory Ground Town, Lussee Fisher, Okfusky Canadian Town, have two children—one about three years old and a baby. Post office, Slumker, Indian Territory.

Lizzie Lasley, about three years old, Sam Lasley, born in either August or September, 1904. Parents: Sam Lasley, Okchiye, Wisey Lasley Weogufky town. Post office, Hanna, Indian Territory.

Jim Haynes (or Sangee), Okchiye Town, Folothokee, Weogufky Town, have a male child about three years old named Joe. Post office, Hanna, Indian Territory.

Taylor Foley, Weogufky, Melina Foley, Okchiye, have a child about two years old. Post office, Slumker, Indian Territory.

Phillip Lindsey, Tuchabatchee, Cilla Lindsey, Hillabee, have a child about three years old. Post office, Hanna, Indian Territory.

Big William (or William Thlocco), Okchiye Town, Cinda Williams, Weogufky Town, have two children—one about three years old—one born in February 1905. Post office, Hanna, Indian Territory.

Freeland Lindsey, Tuckabatchee or Hillabee, Nancy Proctor, Tullahassoche, have a child about two years old. Post office, Hanna, Indian Territory.

Timonthluppy George, Weogufky Town, Nellie George, Pukon Tullahassee, have a child about three years old. Post office Slumker, Indian Territory.

Walter Simmons, Weogufky, Chippie Simmons, Pukon Tullahassee, have a child about one year old. Post office, Hanna, Indian Territory.

Jacob Larney (or Green), Arbeka Tulledega Town, Bettie Larney, (or Green), Hillabee Town, *have a child*. Post office, Hanna, Indian Territory.

John Hill, Okchiye, Millie Hill, Weogufky, have a child about three months old. Post office, Hanna, Indian Territory.



Jim Pigeon, Okchiye Town, Jennie Pigeon, Okchiye Town, have a child about five months old. Post office, Hanna, Indian Territory.

Thomas Deo, Okchiye, Nancy Deo, Fish Pond Town, have a child about three months old. Post office, Hanna, Indian Territory.

Jack Buckner, born December 17, 1904. Parents: Wiley Buckner, Okchiye, Susie Buckner, Cussehta. Post office, Hanna, Indian Territory.

Q. This is the information you received from relatives right around there on April 24, 1905? A. Yes, sir.

Q. Were you informed that the parents of these children were unwilling to make application for their enrollment?

A. Yes, sir.

Q. This was the only way that the rights of these children would be saved?

A. Yes, sir. I made every effort to obtain direct information from the parents but in every instance they refused to give their testimony.

Lona Merrick, being duly sworn, states that the above and foregoing is a true and correct transcript of her stenographic notes as taken in said cause on said date.

(Signed) Lona Merrick

Subscribed and sworn to before me this 9th day of May, 1905. (Seal) (Signed) Edw. C. Griesel, Notary Public.

I, Lona Merrick, solemnly swear that I copied the above testimony from the original, on the 18th day of July, 1905, and that the same is a true copy.

Lona Merrick.

Subscribed and sworn to before me this 18th day of July, 1905. (Seal) Edw. C. Griesel, Notary Public.

Department of the Interior,  
Commissioner to the Five Civilized Tribes.

Muskogee, Indian Territory.

February 16, 1907.

In the matter of the application for the enrollment of Cheparney Larney, as a citizen by blood of the Creek Nation.

Alex Posey, being duly sworn, by O. C. Hinkle, a Notary Public, testified as follows.

Examination by Commissioner:

Q. What is your name, age and post office address?

A. Alex Posey, age 33, Muskogee.

Q. Did you on July 19, 1905, go to the home of Jacob and Bettie Larney, for the purpose of obtaining information with reference to a child of theirs? A. Yes, sir.

Q. Did you see that child? A. Yes, sir.

Q. Was that child a boy or girl?

A. I am under the impression he was a boy.

Q. What is your best opinion with reference to the age of that child?

A. The child appeared at that time to be about a year old.

Q. The parents of that child refused to give any information concerning that child?

A. They wouldn't give any information whatever.

Q. Do you know whether they are members of the Snake or disaffected faction of Creeks?

A. The father of the child's mother very much opposed the work of this Commission.

Q. Do you know if the child is now living?

A. I made inquiries about this child a short time ago and I am informed that the child is still living.

Lona Merrick, being duly sworn, states that the above and foregoing is true and correct transcript of her stenographic notes as taken in said cause on said date.

Lona Merrick,

Subscribed and sworn to before me this 18th day of February, 1907, Oliver C. Hinkle. Notary Public.

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Department of the Interior,  
Commissioner to the Five Civilized Tribes.

Cr. 2448-B Muskogee, Indian Territory, July 19, 1905.  
Commissioner to the Five Civilized Tribes,  
Muskogee, Indian Territory.

Sir: In the matter of the application for the enrollment of an unnamed child of Jacob and Bettie Larney (2448-B), as a citizen by blood of the Creek Nation, I have the honor to report that the parents of said child refuse to execute affidavits or to testify in the case; nor can any evidence be secured from relatives and neighbors about said child. Said child appears to be about a year old, but I am unable to ascertain its name or sex.

Respectfully,

(Signed) Alex Posey,  
Clerk in Charge Field Party.

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NC 1010

OCH CM.

Department of the Interior,  
Commissioner to the Five Civilized Tribes.

In the matter of the application for the enrollment of  
Cheparney Larney as a citizen by blood of the Creek Nation.

Decision.

It appears from the records of this office that on April 24, 1905, testimony was offered "In the matter of the application for the enrollment of certain new borns, as citizens of the Creek Nation" which embraced a child of Jacob Larney (or Green) and Bettie Larney (or Green), which is herein considered as an original application for the enrollment of said person as a citizen by blood of the Creek Nation. Further proceedings were had February 16, 1907.

It appears from the testimony that about July 19, 1905, a Creek field party went to the home of said child for the purpose of obtaining information with reference to the right to enrollment of said child, and that the parents refused to give such information because of the influence over them of the Snake or disaffected faction of the Creeks: that the clerk in charge is under the impression that said child is a male but states that he could not learn the name of said child. In view of the fact that the full name of said child could not be ascertained, and that it is believed that said child is a male, reference to said person will hereinafter be made under the name of Cheparney Larney, the Creek word "Cheparney" signifying "little boy."

The evidence and the records of this office show that said Cheparney Larney is the child of Jacob Larney and Bettie Larney, whose names appear as "Big Jack" and "Bettie" on a schedule of citizens by blood of the Creek Nation, approved by the Secretary of the Interior March 28, 1902, opposite Nos. 8291 and 8292 respectively.

The evidence shows that about July 19, 1905, said Cheparney Larney appeared to be about one year old.

Although the evidence herein is not as full and complete as has heretofore been required by this office to establish the right of a person to be enrolled as a citizen of the Creek Nation, in view of the provisions of the Act of Congress approved April 26, 1906, (34 Stat. L. 137), fixing March 4, 1907, as the date after which the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person as a citizen of said Nation, it is believed that the evidence herein

should be considered sufficient to establish the facts necessary to enrollment.

It is, therefore, ordered and adjudged that said Cheparney Larney is entitled to be enrolled as a citizen by blood of the Creek Nation, under the provisions of the Act of Congress approved March 3, 1905, (33 Stat. L. 1048), and the application for his enrollment as such is accordingly granted.

Tams Bixey, Commissioner.

Muskogee, Indian Territory, Feb. 23, 1907.

Blank 731.

Creek Roll, Citizens by Blood.

New Born.

Act of Congress Approved March 3rd, 1905. (Public No. 212.)

Number	Name.	Age.	Sex.	Blood.	Card No.
1287	Larney, Cheparney	1	M	Full	1010

Blank 734

Department of the Interior.

United States Indian Service

Five Civilized Tribes.

Muskogee, Oklahoma.

This is to certify that I am the officer having the custody of the records pertaining to the enrollment of the member of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes of Indians, and the disposition of the lands of said tribes, and that the following papers, attached hereto, are true and correct copies of that portion of the enrollment record on file in the office in connection with the application of Larney Cheparney Roll No. 1287, for enrollment as a New Born Citizen of the Creek Nation, so far as same relates to the age of said citizen.

Creek New Born Census Card No. 1010; Testimony dated April 24, 1905, and Feb. 16, 1907; Letter dated July 19, 1905; Decision dated Feb. 23, 1907, and Approved Roll as to No. 1287.

(Seal)

Gabe E. Parker,

Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH

## Plaintiff's Exhibit 2.

Homestead deed. (39A) New Born Indian roll No. 1287.

The Muskogee (Creek) Nation,  
(Formerly Indian Territory)  
Oklahoma.

To all to whom these presents shall come, greeting:

Whereas, by the Act of Congress approved March 1, 1901, (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Cheparney Larney a citizen of said tribe, as a homestead,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Cheparney Larney all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz: The North East Quarter of the North East Quarter of Section Thirty (30), Township Seventeen (17) North and Range Nine (9) East of the Indian Base and Meridian, in Oklahoma, containing forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said Act of Congress relating to the use, devise and descent of said land after the death of the said Cheparney Larney; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 10th day of December, A. D. 1908.

(Seal) Moty Tiger.

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior. Approved Mar. 25, 1909.  
Richard A. Ballinger, Secretary. By Oliver A. Phelps, Clerk.

Filed for record on the 30 say of Mar., 1909, at 3 o'clock P. M.

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Department of the Interior.

Office of the Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Cheparney Larney as the same appears of record in book HBK 34, page 115, of Creek deed records. Victor M. Locke, Jr., Superintendent. By P. L. Snyder, Clerk in charge Creek deed records. Date Aug., 12, 1922.

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Plaintiff's Exhibit 3.

Allotment deed. (40A) New Born Indian roll No. 1287  
The Muskogee (Creek) Nation,  
Formerly Indian Territory)  
Oklahoma.

To all to whom these presents shall come, greeting:

Whereas, by the Act of Congress approved March 1, 1901, (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Cheparney Larney a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Cheparney Larney all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz: The Southwest Quarter of the Northeast Quarter of Section Thirty (30), and the East half of the Northwest Quarter of Section Twenty-nine (29), Township Seventeen (17) North, Range Nine (9) East, of the Indian Base and Meridian, in Oklahoma, containing One hundred and twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisalment and valuation and to the provisions of the Act of Congress approved June 30, 1902, (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 10th day of December, A. D. 1908.

(Seal) Moty Tiger.

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, Approved Mar. 25, 1909.  
Richard A. Ballinger, Secretary. By Oliver A. Phelps, Clerk.

Filed for record on the 30 day of Mar., 1909, at 3 o'clock P. M.

---

Department of the Interior,  
Office of the Superintendent for the Five Civilized Tribes.  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Cheparney Larney, as the same appears of record in book ABK. 34 page 115 of Creek deed records. Victor M. Locke, Jr., Superintendent. By P. L. Snyder, clerk in charge of Creek deed records. Date Aug. 12, 1922.

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## (Plaintiff's Exhibit 4.)

Department of the Interior,  
Commissioner to the Five Civilized Tribes.  
Hanna, Indian Territory. July 9, 1906.

In the matter of the application for the enrollment of citizens of the Creek Nation, of minor children born to duly enrolled citizens members of the so called Snake Faction.

William Barnett, being duly sworn, testified as follows: through Alex Posey, official interpreter.

Q. What is your name? A. William Barnett.

Q. What is your age? A. Forty seven.

Q. Are you a citizen of the Creek Nation? A. Yes, sir.

Q. To what Creek Indian town do you belong?

A. Hillabee.

Q. Do you know of any minor children in your town or neighborhood for whose enrollment application has not been made?

A. Jack Gouge has a child over a year old nicknamed Chunna; the child is a girl; I don't know her real name.

Q. What is the name of the mother?

A. Lucinda, she belongs to Hillabee Town.

Q. Is she enrolled as Lucinda Gouge?

A. I think so but I am not sure.

Q. Who are her parents?

A. Jackie Thlocco and Betty, simply Betty; both of Hillabee town.

Q. To what town does the child's father belong?

A. Hickory Ground.

Q. Is he known by any other name? A. I don't know.

Q. Have you any other children not enrolled? A. No, sir.

Q. What is the post office address of the parents?

A. Hanna.

Jack Gouge is identified opposite Creek Indian Roll No. 8498.

Earnest Gouge and his wife, Nicey, have four children probably not enrolled; their names are Pewter, Sam, Suckcho, and Casawka; I don't know their ages.

Q. To what Creek town does the mother belong?

A. Hillabee.

Q. What is your post-office address? A. Hanna.

Earnest Gouge is identified opposite Creek Indian roll No. 8497.

Nora Hall of Hillabee town has a child about a year old. The father of the child is an unknown white man; I don't know the sex of the child nor its name.



Q. Who are Nora Hall's parents?

A. Joe Hall and Jennie Bender; Joe belongs to Ketchopataka and Jennie to Hillabee town.

Q. What is Nora Hall's post office address?

A. Melette.

Nora Hall is identified opposite Creek Indian roll No. 8369.

Bettie Jack or Thlocco and Jackey Thlocco, both of Hillabee town, have two children. The oldest is named Okchumpulla and the other Okseetka, both children are boys and are living. [Clerk's Note: Notation "N. B. 476" on margin opposite this paragraph.]

Q. What is the post office address of the parents?

A. Hanna.

Chaellar Proctor and his wife, Sikey have two children. I don't know their names, ages or sex. The parents both belong to Weogufke; their post office address is Hanna.

Chaellar Proctor is identified opposite Creek Indian roll No. 7868.

I think I have given you all the information I have concerning the Snake children in this vicinity.

I, Alex Posey, being duly sworn, state that the above and foregoing is a true and correct transcript of my notes as taken in said cause on said date.

(Signed) Alex Posey.

Subscribed and sworn to before me this 31 day of July, 1906. (Seal) (Signed) Edward Merrick. Notary Public.

Lona Merrick, being duly sworn, states that she copied the above and foregoing and that the same is a true and correct [] of the original testimony.

(Signed) Lona Merrick.

Subscribed and sworn to before me this 6th day of August 1906. (Seal) (Signed) Edward Merrick. Notary Public.

NBC 476

WSC JCL

Department of the Interior,  
Commissioner to the Five Civilized Tribes.

In the matter of the application for the enrollment of Okchunpulla as a citizen by blood of the Creek Nation.

#### Decision.

The record in this case shows that on July 9, 1906, the testimony of William Barnett was taken by a Creek enroll-

ment field party from this office, "in the matter of the application for the enrollment, as citizens of the Creek Nation, of minor children born to duly enrolled citizens, members of the so-called Snake faction," and that in said proceeding the said William Barnett testified relative to Okchunpulla, a child of Jackey Thlocco and Bettie Jack or Thlocco. Said action is considered as an original application for the enrollment of said Okchunpulla as a citizen by blood of the Creek Nation, under the provisions of the Act of Congress approved April 26, 1906, (34 Stats. 137). The said Jackey Thlocco and Bettie Jack or Thlocco are identified as the same persons whose names appear on a partial schedule of citizens by blood of the Creek Nation approved by the Secretary of the Interior, March 28, 1902, opposite numbers 8291 and 8292, respectively.

The evidence shows that at the time of the original and only proceeding had herein, the said Jackey Thlocco and Bettie Jack or Thlocco had two male children living, named Okchunpulla and Okseetka, of which Okchunpulla was the oldest. Such being the case, Okchunpulla must have been born prior to March 4, 1906.

It is, therefore, ordered and adjudged that the said Okchunpulla is entitled to be enrolled as a citizen by blood of the Creek Nation, under the provisions of the Act of Congress approved April 26, 1906, (34 Stats. 137) and the application for his enrollment as such is accordingly granted.

(Signed) Tams Bixby,  
Commissioner.

Muskogee, Indian Territory. Feb. 19, 1907.

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Department of the Interior.  
Office of the Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Testimony dated July 9, 1906, in re the application for enrollment as a Minor Citizen of the Creek Nation, of Okchunpulla, Minor Creek Roll No. 477, also Decision as to same dated Feb. 19, 1907.

(Seal)

Joe H. Strain,

Acting Superintendent for the Five Civilized Tribes.

Dec. 23, 1920. HJH

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## Plaintiff's Exhibit 5.

NBC 476

WSC JCL

Department of the Interior,  
Commissioner to the Five Civilized Tribes.

In the matter of the application for the enrollment of  
Okseetka as a citizen by blood of the Creek Nation.

## Statement and Order.

The record in this case shows that on July 9, 1906, the testimony of William Barnett was taken by a Creek enrollment field party from this office, "in the matter of the application for the enrollment, as citizens of the Creek Nation, of minor children born to duly enrolled citizens, members of the so-called Snake faction," and that in said proceeding, the said William Barnett testified relative to Okseetka, a child of Jackey Thlocco and Bettie Jack or Thlocco. Said action is considered as an original application for the enrollment of said child as a citizen by blood of the Creek Nation, under the provisions of the Act of Congress approved April 26, 1906. (34 Stats. 137).

The said Jackey Thlocco and Bettie Jack or Thlocco, are identified as the same persons whose names appear on a partial schedule of citizens by blood of the Creek Nation approved by the Secretary of the Interior March 28, 1902, opposite numbers 8291 and 8292.

The evidence shows that at the time of the original and only proceeding had herein, the said Jackey Thlocco and Bettie Jack or Thlocco had a male child named Okseetka, but there is nothing whatever to show when said child was born, whether prior to or subsequent to the 4th day of March, 1906, although diligent efforts have been made by this office, through field parties to obtain such information.

In view of the foregoing, I am of the opinion that there is no authority of law for the enrollment of said Okseetka, as a citizen by blood of the Creek Nation and the application for his enrollment as such is accordingly dismissed.

Tams Bixby, Commissioner.

Muskogee, Indian Territory. Feb. 19, 1907.

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Department of the Interior  
Office of Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of

the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said Tribes and that the above and foregoing is a true and correct copy of Statement and Order dated Sept. 19, 1907, dismissing application for enrollment as Minor Citizen of the Creek Nation, of Okseetka.

(Seal)

Joe H. Strain,

Acting Superintendent for the Five Civilized Tribes.

Dec. 23, 1920. HJH

Plaintiff's Exhibit No. 6.

[See insert for Minor Creek Census Card No. 476.]

Plaintiff's Exhibit No. 7.

Department of the Interior,  
Commissioner to the Five Civilized Tribes.  
Muskogee, Oklahoma, March 19, 1910.

In the matter of the enrollment of Cheparney Larney as a New Born Creek Citizen, who is enrolled opposite approved Roll number 1287.

Examination conducted on behalf of the Commissioner to the Five Civilized Tribes, by W. H. Angell.

Jacob Larney, being first duly sworn by George A. Lowell, notary public, testified, through Jesse McDermott, interpreter, as follows:

Q. What is your name?

A. I have two names; Jacob Larney and Jacob Tiger.

Q. Under what name are you enrolled? A. Jacob Tiger.

Q. How old are you?

A. I do not know; I was a young man at the opening of the Civil War.

Q. What is your post office address? A. Hanna.

Q. Under what name are you generally known in the vicinity in which you reside?

A. I am generally known as Jacob Larney, although some know me by the name of Jacob Tiger.

Q. What is the name of your father?

A. Cotecha Homatka, which means Tiger.

Q. How did you acquire the name of Larney?

A. I am unable to tell you just why they named me that, but it is more of a nick-name given me when a small boy.

Q. Have you any other children besides Cheparney Larney? A. I have a small one.


Rollbook Shuck Nation **NEW BORN** Shuck Nation Shuck Roll Card No. 476  
 Front Office Manana and Son Act of Congress Approved April 24, 1916

Roll No.	Name	Age March 4, 1916	Sex	Blood	Name of Father	Father's Roll No.	Name of Mother	Mother's Roll No.	Birth
477	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
478	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
479	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
480	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
481	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
482	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
483	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
484	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
485	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
486	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
487	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
488	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
489	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916
490	Okshenpalla	1	M	Yell	Big Jack	8291	Big M	8292	Prior to Mar 4, 1916

For Father's enrollment see Indian Roll Card No. 2867  
 For Mother's enrollment see Indian Roll Card No. 2867

Remarks: Application received for Nov 1 & 2 July 9, 1906  
Relay 19 1907 Division established Nov 1 signed by Commissioner  
Relay 2 & 3 in the division for Division not paid

Roll issued Nov 29-1907  
 Enrollment of No. 477 Approved July 22 1907 Date Aug 14 1906  
 By Secretary of Interior Mar 2, 1907

 Commissioner

Department of the Interior,  
Office of  
Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Minor Creek Census Card No. 476.

(Seal)

Joe H. Strain,  
Acting Superintendent for the Five Civilized Tribes.

Dec. 23, 1920. HJH

Q. What is the name of that child? A. Joe.

Q. Any other name? A. Joe Tiger.

Q. When was Cheparney Larney born?

A. He is now about six years old.

Q. Has he got any other name?

A. No; there have been a number of names given him but we never called him by either of those names.

Q. Is he living? A. Yes, sir.

Q. Does he live with you? A. Yes, sir.

Q. Did Alex Posey appear at your house in April, 1905, to ascertain whether or not you had any children that were entitled to enrollment? A. Yes, sir.

Q. Did you tell him that you had a child that ought to be enrolled at that time? A. Yes, sir.

Q. Did you tell him who the mother of that child was?

A. Yes, sir.

Q. Who did you tell him was the mother of that child?

A. I did not tell him the name of the mother, because she was present herself and Mr. Posey knew her.

Q. What is the name of the mother of the child?

A. Peetie.

Q. Under what other name is she known? A. None.

Q. Who is Lucy Green?

A. I am unable to tell you who Lucy Green is just now.

Q. Under what name is your wife, Peetie, enrolled?

A. She ought to be enrolled under the name of Peetie.

Q. Have you received allotment certificates and patents covering the land allotted to her?

A. No, not yet. I understand that her land is located near the town of Paden.

Q. Has your wife any brothers and sisters living?

A. Jennetta, Siah and George Hutkey or White.

Q. What are the English names of your wife's father and mother?

A. Bennie is the name of the father. I do not know her mother's name.

Q. Did your wife go by the name of Green?

A. Yes, sir, if she was called according to my Indian name, she would be called Green.

Q. What is your Indian name?

A. Jacob Larney is my boy name.

Q. What is the word for Green in the Creek language?

A. Larney.

Q. Was your wife ever known by the name of Lucy Green?

A. I never did hear any body call her by that name, but it seems from the records here that she is enrolled as Lucy Green.

Q. How old is she? A. About thirty years old.



Q. Do you know Big Jack? A. Yes, sir.

Q. Has he got a wife by the name of Bettie? A. Yes, sir.

It appears from the records of this office that one Cheparney Larney is enrolled as a New Born Creek citizen opposite No. 1287; that the names of the parents are given as Jacob Larney and Bettie Larney and that they were identified on the approved roll as Big Jack and Bettie, respectively.

Q. Have you any reason to believe that this identification is incorrect?

A. To my knowledge Big Jack and his wife have never had a child by the name of Cheparney.

Q. Have they any male children under ten years of age?

A. They lost a male child about two years ago; they have one living at the present time and his name is Okchunpulla.

Q. Cheparney means little boy, in Creek, does it not?

A. Yes, sir.

Q. Do you know whether or not Alex Posey went to the house of Big Jack to see whether or not he had any children to enroll in 1905? A. No, sir, I do not.

Q. Was Big Jack ever known by the name of Larney?

A. No.

Q. Is Peetie the only wife you ever had? A. Yes, sir.

Q. And Cheparney is your only child?

A. Excepting the one that I have now.

Q. Did you ever execute an affidavit relative to the birth of Cheparney Larney?

A. No, I did not. I was talking to him on the train about the child at another time and he told me that it would not be necessary for me to make an affidavit of any kind about the enrollment of the child.

Q. How long was that after he appeared at your house on April 24, 1905? A. I don't remember.

Q. Did he tell you that Cheparney Larney had already been enrolled at the time he saw you on the train?

A. No, he told me that he was going to have him enrolled himself.

Q. Did you ever receive a notice from the Commissioner to the Five Civilized Tribes to appear at the Creek Land office and select land for Cheparney Larney? A. Yes, sir.

Q. Did you ever come here to file for Cheparney?

A. No.

Q. Were you ever notified that the Commissioner had made an arbitrary allotment to Cheparney? A. Yes, sir.

Q. Did you ever receive allotment certificates covering the land allotted to Cheparney?



A. No; that is why I came in to make inquiry about the child's land.

Q. Has your wife a Creek name?

A. No, the only name that she has is Peetie.

Q. What town does she belong to?

A. Hillabee Canadian.

Mattie P. Shanafelt, being first duly sworn, states that as stenographer to the Commissioner to the Five Civilized Tribes, she reported the proceedings had in the above entitled cause, and that the above and foregoing is a true and correct transcript of her stenographic notes taken on said date in said cause.

Mattie P. Shanafelt.

Subscribed and sworn to before me this March 24', 1910.  
(Seal) Edward Merrick, Notary Public.

Department of the Interior,  
Office of Superintendent for the Five Civilized Tribes  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of testimony dated March 19, 1910, in re the application for enrollment as a New Born Citizen of the Creek Nation, of Cheparney Larney, Creek New Born Roll No 1287.

(Seal)

Gabe E. Parker,

Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH

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Plaintiff's Exhibit No. 12.

NBC 1010

Muskogee, Indian Territory,  
March 18, 1907.

Bettie Larney, % Jacob Larney,  
Hanna, Indian Territory.

Dear Madam: You are hereby advised that the Secretary of the Interior under date of March 4, 1907, approved the enrollment of your minor child, Cheparney Larney, as a citizen by blood of the Creek Nation, and that the name of said child appears upon the roll of new born citizens by blood, enrolled under the Act of Congress approved March 3, 1905, as number 1287.

This child is now entitled to allotment, and application

therefor should be made without delay at the Creek Land Office, Muskogee, Indian Territory.

Respectfully,

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Department of the Interior,  
Office of Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Letter dated March 18, 1907, in re the enrollment as a New Born Citizen of the Creek Nation, of Cheparney Larney, Creek New Born Roll No. 1287.

(Seal)

Gabe E. Parker,

Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH

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Plaintiff's Exhibit No. 13.

[See insert for Creek Census Card No. 2867.]

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Plaintiff's Exhibit No. 14.

[See insert for Creek Census Card No. 2901.]

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Plaintiff's Exhibit No. 15.

[See insert for Creek Census Card No. 2733.]

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Plaintiff's Exhibit No. 16.

[See insert for Certificate of Arbitrary Allotment to Cheparney Larney.]

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# Plaintiff's Exhibit No. 13.

Roll No. 8367  
 Post Office Shannon, Oklahoma

Roll No. 8367  
 NATION Choctaw  
 ROLL

Card No. 8367  
 File No. 9044

Order No.	NAME	Age	Sex	BLOOD	Year	TRIAL ENROLLMENT	Year	TRIAL ENROLLMENT OF FATHERS	Year
8291	Baugh	60	M	Ind	1899	Ind	1900	Ind	1901
8292	Edlin	with 40	M	"	"	"	"	"	"
8293	Gray	38	M	"	"	"	"	"	"
8294	Quinn	21	M	"	"	"	"	"	"
8295	Quinn	17	M	"	"	"	"	"	"
8296	Quinn	13	M	"	"	"	"	"	"
8297	Quinn	13	M	"	"	"	"	"	"
8298	Quinn	13	M	"	"	"	"	"	"
8299	Quinn	13	M	"	"	"	"	"	"
8300	Quinn	13	M	"	"	"	"	"	"
8301	Quinn	13	M	"	"	"	"	"	"
8302	Quinn	13	M	"	"	"	"	"	"
8303	Quinn	13	M	"	"	"	"	"	"
8304	Quinn	13	M	"	"	"	"	"	"
8305	Quinn	13	M	"	"	"	"	"	"
8306	Quinn	13	M	"	"	"	"	"	"
8307	Quinn	13	M	"	"	"	"	"	"
8308	Quinn	13	M	"	"	"	"	"	"
8309	Quinn	13	M	"	"	"	"	"	"
8310	Quinn	13	M	"	"	"	"	"	"
8311	Quinn	13	M	"	"	"	"	"	"
8312	Quinn	13	M	"	"	"	"	"	"
8313	Quinn	13	M	"	"	"	"	"	"
8314	Quinn	13	M	"	"	"	"	"	"
8315	Quinn	13	M	"	"	"	"	"	"
8316	Quinn	13	M	"	"	"	"	"	"
8317	Quinn	13	M	"	"	"	"	"	"
8318	Quinn	13	M	"	"	"	"	"	"
8319	Quinn	13	M	"	"	"	"	"	"
8320	Quinn	13	M	"	"	"	"	"	"
8321	Quinn	13	M	"	"	"	"	"	"
8322	Quinn	13	M	"	"	"	"	"	"
8323	Quinn	13	M	"	"	"	"	"	"
8324	Quinn	13	M	"	"	"	"	"	"
8325	Quinn	13	M	"	"	"	"	"	"
8326	Quinn	13	M	"	"	"	"	"	"
8327	Quinn	13	M	"	"	"	"	"	"
8328	Quinn	13	M	"	"	"	"	"	"
8329	Quinn	13	M	"	"	"	"	"	"
8330	Quinn	13	M	"	"	"	"	"	"
8331	Quinn	13	M	"	"	"	"	"	"
8332	Quinn	13	M	"	"	"	"	"	"
8333	Quinn	13	M	"	"	"	"	"	"
8334	Quinn	13	M	"	"	"	"	"	"
8335	Quinn	13	M	"	"	"	"	"	"
8336	Quinn	13	M	"	"	"	"	"	"
8337	Quinn	13	M	"	"	"	"	"	"
8338	Quinn	13	M	"	"	"	"	"	"
8339	Quinn	13	M	"	"	"	"	"	"
8340	Quinn	13	M	"	"	"	"	"	"
8341	Quinn	13	M	"	"	"	"	"	"
8342	Quinn	13	M	"	"	"	"	"	"
8343	Quinn	13	M	"	"	"	"	"	"
8344	Quinn	13	M	"	"	"	"	"	"
8345	Quinn	13	M	"	"	"	"	"	"
8346	Quinn	13	M	"	"	"	"	"	"
8347	Quinn	13	M	"	"	"	"	"	"
8348	Quinn	13	M	"	"	"	"	"	"
8349	Quinn	13	M	"	"	"	"	"	"
8350	Quinn	13	M	"	"	"	"	"	"
8351	Quinn	13	M	"	"	"	"	"	"
8352	Quinn	13	M	"	"	"	"	"	"
8353	Quinn	13	M	"	"	"	"	"	"
8354	Quinn	13	M	"	"	"	"	"	"
8355	Quinn	13	M	"	"	"	"	"	"
8356	Quinn	13	M	"	"	"	"	"	"
8357	Quinn	13	M	"	"	"	"	"	"
8358	Quinn	13	M	"	"	"	"	"	"
8359	Quinn	13	M	"	"	"	"	"	"
8360	Quinn	13	M	"	"	"	"	"	"
8361	Quinn	13	M	"	"	"	"	"	"
8362	Quinn	13	M	"	"	"	"	"	"
8363	Quinn	13	M	"	"	"	"	"	"
8364	Quinn	13	M	"	"	"	"	"	"
8365	Quinn	13	M	"	"	"	"	"	"
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8378	Quinn	13	M	"	"	"	"	"	"
8379	Quinn	13	M	"	"	"	"	"	"
8380	Quinn	13	M	"	"	"	"	"	"
8381	Quinn	13	M	"	"	"	"	"	"
8382	Quinn	13	M	"	"	"	"	"	"
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8386	Quinn	13	M	"	"	"	"	"	"
8387	Quinn	13	M	"	"	"	"	"	"
8388	Quinn	13	M	"	"	"	"	"	"
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8392	Quinn	13	M	"	"	"	"	"	"
8393	Quinn	13	M	"	"	"	"	"	"
8394	Quinn	13	M	"	"	"	"	"	"
8395	Quinn	13	M	"	"	"	"	"	"
8396	Quinn	13	M	"	"	"	"	"	"
8397	Quinn	13	M	"	"	"	"	"	"
8398	Quinn	13	M	"	"	"	"	"	"
8399	Quinn	13	M	"	"	"	"	"	"
8400	Quinn	13	M	"	"	"	"	"	"

ENROLLMENT.  
 APPROVED BY THE DIRECTOR  
 OF THE BUREAU OF INDIAN AFFAIRS  
 WASHINGTON, D.C. 20540

For affidavit of citizenship also  
 known as Choctaw County, Okla. 1900  
 Long, James, at 8401 to 8402, married  
 to Mary, James, 20, 1887 and 1900 and  
 not 1902 known.

W. H. H. 1900

Department of the Interior,  
Office of  
Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Creek Census Card No. 2867.

(Seal)

Gabe E. Parker,  
Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH

Plaintiff's Exhibit No. 14.

Poster Home

Per Oct. 1890. 1850

Bozette

# NATION

breakers

## ROLL

Card No. 2901

Field No. 3124

PATIENT				TRIAL ENROLLMENT				TRIAL ENROLLMENT OF PARENTS				
NAME	AGE	SEX	BLOOD	Year	Month	Day	Year	Month	Day	Year	Month	Day
James Henry	18	5	Full	1903	11	11	1903	11	11	1903	11	11

RECEIVED  
JAN 26 1903

ENROLLMENT  
JAN 26 1903

Not in 1890 Not in 1891

made 20.12.1902

Applicant of the above is a son of the  
James Henry born 1881 in the mother  
of Henry Henry 1881 and 1892  
born 1892

W.H.A.

May 22 1903

Department of the Interior,  
Office of  
Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Creek Census Card No. 2901.

(Seal)

Gabe E. Parker,  
Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. H.JH



# Plaintiff's Exhibit No. 15.

Residence Ponce

No 2 Havana

Cuba NATION

Endeavor ROLL

Cert No. 2753

Post Office Buenos Aires

File No. 2818

Date of Birth	NAME	Age	SEX	STATUS	TRIAL ENROLLMENT			TRIAL ENROLLMENT OF PARENTS		
					Year	Month	No.	Name of Father	Year	Name of Mother
1917	Elle. Neave	50 m	Male		1895	June	33	Walter Neave	1900	Melville Neave
1918	Tiger Neave	45 m			1895	"	34	Tiger Neave	1900	Melville Neave
1919	John. Neave	43 f			1895	"	35	John Neave	1900	Melville Neave
1920	" Neave	42 f			1895	"	36	John Neave	1900	Melville Neave
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>ENROLLMENT.</b>          No. 2818-1920, Havana          No. 2818-1920, Havana          No. 2818-1920, Havana       </div>										
1921	CITIZENSHIP CERTIFICATE									
	ISSUED FOR No. 3									
	JUN 27, 1902									
1922	CITIZENSHIP CERTIFICATE									
	ISSUED FOR No. 2									
	Dec 31, 1901									
1923	CITIZENSHIP CERTIFICATE									
	ISSUED FOR No. 1									
	Oct 19, 1901									
1924	CITIZENSHIP CERTIFICATE									
	ISSUED FOR No. 1									
	Apr 27, 1902									

5/18/15 affidavit filed that at that time not the mother of No. 1

DATE OF SUBMISSION FOR ENROLLMENT  
May 28, 1901

Department of the Interior,  
Office of  
Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of Creek Census Card No. 2733.

(Seal)

Gabe E. Parker,  
Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH



DEPARTMENT OF THE INTERIOR,  
COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

**MUSKOGEE LAND OFFICE.**

Allowments of land and homestead designations, as heretofore described, are hereby made to the following named persons

[illegible]

Dated at Mudgeer, Indian Territory, this..... 7<sup>th</sup> day  
of..... November..... 1907..

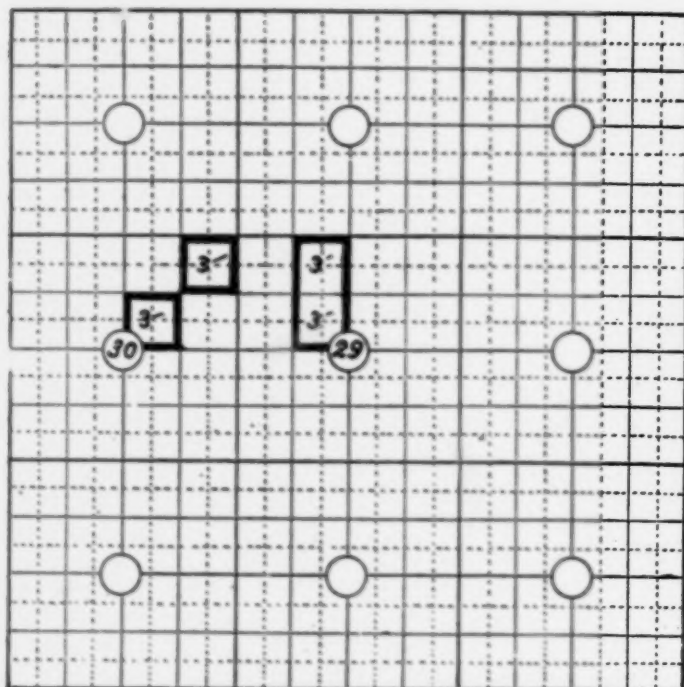
July 27-1902

*John*



(142)

## DEPARTMENT OF THE INTERIOR.

Creek Nation.Township No. 17 N Range No. 9 E

Department of the Interior.

No.

In the Matter of the Allotment of the Lands of the Creeks.

Creek Nation.

To the Chief Clerk, Creek Land Office:

This is to certify that the name of Cheparney Larney (represented by Arbitrary) appears upon the roll of new born citizens by blood of the Creek Nation, approved by the Secretary of the Interior, No. 1287, and is entitled to an allotment of the lands of the Creek Nation under the Act of Congress approved March 3, 1905.

Commissioner.

Muskogee, Ind. Ter. Nov. 7, 1907. SCP

Department of the Interior,  
Commissioner to the Five Civilized Tribes.

SCP

NBC 1287

Muskogee, Indian Territory,  
July 18, 1907.

Jacob Larney,  
Hanna, Indian Territory.

Dear Sir: You are hereby advised that on March 4, 1907, the Secretary of the Interior approved the enrollment of your minor child, Cheparney Larney, as a citizen by blood of the Creek Nation, and that the name of said child appears upon the roll of new born citizens of the Creek Nation opposite Number 1287.

The child is now entitled to an allotment and application therefor should be made without delay at the Creek Land Office, Muskogee, Indian Territory.

You are therefore notified that 90 days from the date of this letter will be allowed you in which to appear at the Creek Land Office, in Muskogee, Indian Territory, and designate the land desired to be allotted your minor child. If, at the expiration of the said 90 days, you have failed to so appear for the purpose of making a selection the Commissioner will allot the necessary amount of land for the completion of the said allotment.

It is therefore important to you that you appear at the Muskogee Office and make selection of allotment as soon as possible.

Respectfully,

W. C. Polock,  
Acting Commissioner.

MJC

Creek Nation NBC 1287

May 8, 1908.

Mr. Jacob Larney,  
Hanna, Oklahoma.

Sir: You are hereby advised that on November 7, 1907, the Commissioner arbitrarily allotted to your minor child, Cheparney Larney, whose name appears upon the New Born Creek Indian roll opposite No. 1287, as surplus,

The SW/4 of the NE/4 of Section 30 and the E/2 of the NW/4 of Section 29, Township 17 North, Range 9 East;

for the homestead,

The NE/4 of the NE/4 of Section 30, Township 17 North,  
Range 9 East,

and certificates for the above described allotment selection

will be mailed to you at the expiration of nine months from the date of the filing thereof.

Respectfully,

SCP (RL).

Commissioner.

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Department of the Interior,  
Office of Superintendent for the Five Civilized Tribes,  
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Entire Allotment Record in re Cheparney Larney, Creek New Born Citizen Roll No. 1287, as follows.

Arbitrary Allotment; Plat; Citizenship Certificate; Letters dated July 18, 1907, and May 8, 1909.

(Seal)

Gabe E. Parker,

Superintendent for the Five Civilized Tribes.

Dec. 22, 1920. HJH

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(Waiver of Notice of Filing Statement of Evidence.)

We, the undersigned solicitors for the plaintiff, Cheparney Larney, hereby waive notice of the filing of the foregoing statement of evidence before approval of the same, and agree that the same is a complete and correct statement of the evidence introduced upon the trial of this cause and that the same may be approved and made a part of the record in said cause without further notice to us.

This 12th day of August, 1922.

H. B. REUBELT,

CLARK NICHOLS.

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Order Approving the Foregoing Statement of the Evidence.

The above and foregoing statement of the evidence being this day presented to me, and it appearing that solicitors for the plaintiff have waived notice of the lodging of the same with the Clerk and have agreed that the same is a complete and correct statement of the evidence offered upon the trial of this cause and that the same may be approved and made a part of the record without further notice to them, and it

appearing that the said statement of the evidence is complete and correct, the same is hereby approved and made a part of the record in said cause for the purpose of appeal.

This 15th day of August, 1922.

R. L. WILLIAMS, Judge.

Filed Aug. 15, 1922. W. V. McClure, Clerk.

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### Petition for Appeal.

In the District Court of the United States for the Eastern  
District of Oklahoma.

Cheparney Larney, a minor, by his legal guardian, Bennie Green, Plaintiff, v. L. B. Norton, Bettie, Kizzie Gouge, Okchumpulla, and Suckcho and Alberta Gouge and Sam Gouge by Ernest Gouge, their legal guardian, and Nogo-wee, by Jim Hill, his legal guardian, Defendants.—Equity No. 2658.

To the Honorable Robert L. Williams, District Judge:

The above named defendants feeling themselves aggrieved by the decree made and entered in this cause on the 3rd day of January, A. D. 1922, do hereby appeal from said decree to the Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the assignment of errors which is filed herewith, and they pray that their appeal be allowed, and that citation issue, as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

And your petitioners further pray that a proper order touching the security to be required of them to perfect their appeal be made.

G. R. HORNER,

GIBSON & HULL,

Solicitors for Defendants.

Filed in open court Jul. 1, 1922. W. V. McClure, Clerk.

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### Assignments of Error.

Now come the defendants in the above entitled cause and file the following assignments of error upon which they will rely upon their prosecution of the appeal in the above entitled cause from the decree made by this honorable court on the 3rd day of January, 1922.

## I.

The said court erred in finding that the plaintiff herein, Cheparney Larney, was the person enrolled by the Dawes Commission on the New Born Creek Indian Roll opposite Roll No. 1287.

## II.

The said court erred in refusing to hold that the enrollment record of the person enrolled on the New Born Creek Indian Roll opposite Roll No. 1287 as Cheparney Larney was conclusive of the fact that such person was the child of Big Jack, enrolled on the Creek Indian Roll opposite Roll No. 8291, and Bettie, enrolled on the Creek Indian Roll opposite Roll No. 8292.

## III.

The said court erred in admitting any testimony to contradict the enrollment record of the said allottee, Cheparney Larney, and in admitting testimony for the purpose of showing that said allottee was not the child of the said Big Jack and the said Bettie, as found by the Dawes Commission.

## IV.

The said court erred in admitting any evidence for the purpose of impeaching the decision of the Commission to the Five Civilized Tribes rendered February 23, 1907, adjudging that the Cheparney Larney enrolled on the New Born Creek Indian Roll opposite Roll No. 1287 was the child of Big Jack and Bettie, whose names appear on schedule of citizens by blood of the Creek Nation approved by the Secretary of the Interior March 28, 1902, opposite Nos. 8291 and 8292, respectively.

## V.

The said court erred in admitting in evidence over the objection of these defendants Exhibit No. 7, purporting to be a record of testimony of one Jacob Larney, or Tiger, taken by W. H. Angell on March 19, 1910, to the effect that he was the father of a child who was given the name Cheparney Larney, and whose mother was Lucy Green, for the reason that same was incompetent as tending to impeach the decision of the Commission to the Five Civilized Tribes finding that said Cheparney Larney was the child of Big Jack and Bettie, and for the further reason that the same was made long subsequent to the enrollment of said allottee, Cheparney Larney.

## VI.

The said court erred in admitting in evidence over the

objection of the defendants, Plaintiff's Exhibit No. 8, which was the Census Card of one Lucy Green showing her to be enrolled on the final rolls of citizens by blood of the Creek Nation opposite No. 8361, the daughter of Bennie Green and Sallie Green, for the reason that same was incompetent for the purpose of impeaching the enrollment record of Cheparney Larney and upon its face showed that the said Lucy Green was not the person found by the Commission to the Five Civilized Tribes to be the mother of said allottee, Cheparney Larney.

## VII.

The said court erred in admitting in evidence over the objection of these defendants, Plaintiff's Exhibit No. 2, being the Census Card of one Jacob Tiger, showing him to have been enrolled on the rolls of Creek citizens by blood opposite No. 7968, as the child of Tiger and Mollie Dixon, for the reason that the same was incompetent to impeach the record of the Commission to the Five Civilized Tribes enrolling said Cheparney Larney, and showing upon its face that the said Jacob Tiger was not the person found by the Commission aforesaid to be the father of said allottee.

## VIII.

The said court erred in rendering its final decree in this cause for the reason that the bill filed in this cause failed to contain any allegations sufficient to vest this court with jurisdiction of this cause, and for the reason that the record in this cause does not show that this court had jurisdiction thereof.

Wherefore, the defendants pray that said decree be reversed, and the District Court directed to dismiss the bill at the cost of the plaintiff, or for such other relief as to the court may seem proper.

G. R. HORNER,  
GIBSON & HULL,  
Solicitors for Defendants.

Filed in open court, Jul. 1, 1922. W. V. McClure, Clerk.

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## Order Allowing Appeal.

Now on this the 1st day of July, A. D. 1922, the defendants above named having presented their petition for appeal, and after duly considering the same it appearing that same should be allowed;



It is, therefore, considered, ordered and adjudged that said petition for appeal be, and hereby is, allowed upon giving a bond by said defendants conditioned as provided by law with good security in the penal sum of \$500.00.

R. L. WILLIAMS, Judge.

Filed in open court, Jul. 1, 1922, W. V. McClure, Clerk.

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Bond on Appeal.

Know all men by these presents: That we, L. B. Norton, Bettie, and Kizzie Gouge, Okchumpulla, and Suckcho, Sam and Alberta Gouge, by Ernest Gouge, their legal guardian, and Nogowee, by Jim Hill, his legal guardian, as principals, and U. S. Fidelity & Guaranty Co. as surety, are held and firmly bound unto Cheparney Larney in the full and just sum of \$500.00, to be paid to the said Cheparney Larney, his heirs, executors, administrators, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally by these presents.

Sealed with our seals and dated this 30th day of June, in the year of our Lord, 1922.

Whereas, lately on the 3rd day of January, 1922, in a suit pending in said court between Cheparney Larney, a minor, by Bennie Green, his legal guardian, plaintiff, and L. B. Norton, Bettie, Kizzie Gouge, Okchumpulla, and Suckcho, Sam and Alberta Gouge, by Ernest Gouge, their legal guardian, and Nogowee, by Jim Hill, his legal guardian, defendants, a decree was rendered against the said defendants, and the said defendants have obtained the allowance of an appeal of the said cause to reverse the decree in the aforesaid suit, and a citation directed to the said Cheparney Larney citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said defendants shall prosecute said appeal to effect and pay all costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

L. B. NORTON,  
BETTIE,  
KIZZIE GOUGE,  
OKCHUMPULLA,  
SUCKCHO,

**SAM & ALBERTA GOUGE,**

By Earnest Gouge,  
Their Guardian,

**NOGOWEE,**

By Jim Hill,  
His Guardian,  
Principals.

By G. R. HORNER,  
Their Solicitor.

U. S. Fidelity & Guaranty Co.,

By **BEN G. HARNED,**  
Attorney in Fact.

Approved the 1st day of July, 1922.

**R. L. WILLIAMS,**

Judge of the United States District Court  
for the Eastern District of Oklahoma.

Filed in open court, Jul. 1, 1922. W. V. McClure, Clerk.

### Citation.

United States of America to Cheparney Larney, a Minor by  
Bennie Green, his Legal Guardian, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, in the State of Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Eastern District of Oklahoma, wherein L. B. Norton, Bettie, Kizzie Gouge, Okchumpulla, Suckcho, Sam and Alberta Gouge, minors, by Ernest Gouge, their legal guardian, and Nogowee, by Jim Hill, his legal guardian, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Robert L. Williams, Judge of the United States District Court for the Eastern District of Oklahoma, this the 1st day of July, A. D. 1922.

**R. L. WILLIAMS,**

United States District Judge.

Due and legal service of the foregoing citation upon Cheparney Larney, a minor, and Bennie Green, his legal guardian, the plaintiff, is hereby acknowledged to have been made on this 8th day of July, 1922.

H. B. REUBELT,  
CLARK NICHOLS,

Solicitor of record for Cheparney  
Larney, a minor, and Bennie Green,  
his legal guardian.

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Praecipe for Printing Record and Election as to Printing  
Record.

To the Clerk of said Court:

You are hereby requested to make a transcript of the record in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript the following and no other papers or exhibits, to-wit:

1. Bill of Complaint.
2. Answer of defendants L. B. Norton, Big Jack and Bettie.
3. Reply of plaintiff.
4. Order allowing amended answer of defendants to be filed.
5. Amended answer of defendants L. B. Norton, Big Jack and Bettie.
6. Statement of the evidence.
7. Final Decree.
8. Motion of heirs of Big Jack to revive the cause.
9. Order allowing revival and substituting heirs of Big Jack as parties defendant.
10. Petition for appeal.
11. Assignments of error.
12. Order allowing appeal.
13. Bond on appeal.
14. Citation, and acceptance of service.
15. This Praecipe and acceptance of service thereon.
16. Certificate of Clerk.

And in this connection appellants do hereby elect to have the transcript of the record in the above entitled cause print-

ed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma.

G. R. HORNER,  
N. A. GIBSON,  
J. L. HULL,  
T. L. GIBSON,

Solicitors for L. B. Norton, Bettie Kizzie Gouge, Okchumpulla and Suckcho, Sam and Alberta Gouge, minors by Ernest Gouge their legal guardian and Nogowee, a minor by Jim Hill, his legal guardian, Appellants.

The undersigned solicitors for the appellee, Cheparney Larney, a minor by Bennie Green, his legal guardian, hereby acknowledge service of the above and foregoing praecipe and notice of election of the appellants to file in the United States Circuit Court of Appeals for the Eighth Circuit a printed transcript of the record in said case; and the said solicitors for the said appellee hereby agree that the said printed transcript in said case shall contain a copy of the parts of the record specifically named in said praecipe and no other; and further agree that the same may be printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma.

Dated this 8th day of July, A. D., 1922.

H. B. REUBELT,  
CLARK NICHOLS,

Solicitors for appellee, Cheparney Larney, a minor by Bennie Green, his legal Guardian.

Filed Jul. 10, 1922. W. V. McClure, Clerk.

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Certificate of Clerk.

United States of America,  
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *Cheparney Larney, etc., v. L. B. Norton, et al.*, No. 2658 Equity, as was

ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto, and returned herewith, is the original citation issued in this cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskegee, this 28th day of August, A. D. 1922.

W. V. McCLURE, Clerk,

(Seal)

By WARREN BUTZ, Deputy.

And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, DECEMBER TERM, A. D. 1922

No. 6164

[Title omitted]

OPINION—Filed April 25, 1923

Mr. J. L. Hull (Mr. G. R. Horner, Mr. N. A. Gibson and Mr. T. L. Gibson were with him on the brief) for appellants.

Mr. H. B. Reubelt (Mr. E. J. Van Court and Mr. Clark Nichols were with him on the brief), for appellees.

Before Kenyon, Circuit Judge, and Booth and Johnson, District Judges

BOOTH, *District Judge*, delivered the opinion of the Court.

This is a suit to quiet title to certain land in appellee (plaintiff below); to cancel a deed of the land made by some of the defendants to the defendant Norton; and to enjoin defendants from asserting any claim against plaintiff to the land. Upon the trial decree was entered for plaintiff.

In this Court for the first time, appellant challenges the jurisdiction of the Court below. Nevertheless, it is the duty of this Court to consider the question of jurisdiction as in every case, and whether raised by the parties or not. *C. B. & Q. R. R. Co. v. Willard*, 220 U. S. 413; *Louisville & Nashville R. R. v. Mottley*, 211 U. S. 149; *Garvin v. Kogler*, 272 Fed. 442.

It is conceded that there is no diversity of citizenship between the parties, but jurisdiction is rested upon the ground that the suit is one arising under a law of the United States.

The rules for pleading jurisdictional facts are well settled. The facts must be set forth in the plaintiff's complaint by distinct averment and not by inference. They must be contained in a statement of the plaintiff's own cause of action and not by way of anticipation of some defense. *Shulthis v. McDougal*, 225 U. S. 561; *Hull v. Burr*, 234 U. S. 712; *Taylor v. Anderson*, 234 U. S. 74; *Joy v. St. Louis*, 201 U. S. 332.

It is not sufficient that title to land is claimed under a law of the United States unless the suit really and substantially involves a dispute or controversy respecting the validity, construction, or effect of such a law upon the determination of which the result depends. *Joy v. St. Louis*, *Supra*; *Shulthis v. McDougal*, *Supra*; *Scott v. First National Bank*, 285 Fed. 832; *Earnhart v. Switzler*, 179 Fed. 832.

Applying these rules to the complaint in the present case, we are of opinion that the averments were not sufficient to show jurisdic-

tion. However, where the jurisdiction is not challenged by a pleading, but the question is raised for the first time in the Appellate Court, jurisdiction sufficiently appears if it is shown in any part of the record including the proofs. *Robertson v. Cease*, 97 U. S. 643, 648; *Sun Printing Assn. v. Edwards*, 194 U. S. 377, 382; *Horne v. Hammond Co.*, 155 U. S. 393; *Doolan v. Carr*, 125 U. S. 618; *Mahoning Valley Railway Co. v. O'Hara*, 196 Fed. 945.

From the pleadings and the proofs contained in the record in the present case, it clearly appears, and will be adverted to later, that plaintiff's claim is based upon one construction of the act of March 3, 1905, while defendant's claim is based upon a different construction of the same act. This made a Federal question and the Court below had jurisdiction of the cause.

The land in question was an allotment pursuant to Act of Congress, March 1, 1901, (31 Stat. 861), made to a citizen of the Creek Tribe of Indians named in the deeds as Cheparney Larney. It is the claim of plaintiff that he is the person who was enrolled as a full-blood Indian on the Creek tribal rolls opposite Roll No. 1287, and that he thereby became entitled to an allotment, and that he in fact received the allotment in question. It is the claim of defendants that the person who was enrolled was not the plaintiff, but a son of "Big Jack," one of the original defendants; that the son died about November, 1906, and that the defendants succeeded to the rights of said deceased son in the allotted land. A vital question in the case is, therefore, one of identity and it involves the construction of the decision of the Commissioner to the Five Civilized Tribes granting and ordering the enrollment involved, and also of the statute under which the Commissioner was acting. The decision of the Commissioner is as follows:

"NC 1010.

OCH CM.

Department of the Interior

Commissioner to the Five Civilized Tribes

In the Matter of the Application for the Enrollment of CHEPARNEY  
LARNEY as a Citizen by Blood of the Creek Nation

#### *Decision*

It appears from the records of this office that on April 24, 1905, testimony was offered 'In the matter of the application for the enrollment of certain new borns, as citizens of the Creek Nation' which embraced a child of Jacob Larney (or Green) and Bettie Larney (or Green), which is herein considered as an original application for the enrollment of said person as a citizen by blood of the Creek Nation. Further proceedings were had February 16, 1907.

It appears from the testimony that about July 19, 1905, a Creek field party went to the home of said child for the purpose of obtaining information with reference to the right to enrollment of said

child, and that the parents refused to give such information because of the influence over them of the Snake or disaffected faction of the Creeks; that the clerk in charge is under the impression that said child is a male but states that he could not learn the name of said child. In view of the fact that the full name of said child could not be ascertained, and that it is believed that said child is a male, reference to said person will hereinafter be made under the name of Cheparney Larney, the Creek word 'Cheparney' signifying 'little boy.'

The evidence and the records of this office show that said Cheparney Larney is the child of Jacob Larney and Bettie Larney, whose names appear as 'Big Jack' and 'Bettie' on a schedule of citizens by blood of the Creek Nation, approved by the Secretary of the Interior March 28, 1902, opposite Nos. 8291 and 8292 respectively.

The evidence shows that about July 19, 1905, said Cheparney Larney appeared to be about one year old.

Although the evidence herein is not as full and complete as has heretofore been required by this office to establish the right of a person to be enrolled as a citizen of the Creek Nation, in view of the provisions of the Act of Congress approved April 26, 1906, (34 Stat. L. 137), fixing March 4, 1907, as the date after which the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person as a citizen of said Nation, it is believed that the evidence herein should be considered sufficient to establish the facts necessary to enrollment.

It is, therefore, ordered and adjudged that said Cheparney Larney is entitled to be enrolled as a citizen by blood of the Creek Nation, under the provisions of the Act of Congress approved March 3, 1905, (33 Stat. L. 1048), and the application for his enrollment as such is accordingly granted.

Tams Bixby, Commissioner.

Muskogee, Indian Territory, Feb. 23, 1907."

It is undisputed that the allotment deeds to the land were delivered to the father of plaintiff, and that plaintiff has been in possession of the land since prior to the commencement of the present suit.

The Court below, holding that there was an ambiguity in the record, received evidence as to the identity of the person enrolled, and decided in favor of the plaintiff. It is the contention of appellants in this court:

(1) That the Commissioner's decision is conclusive evidence that the person enrolled was the child of "Big Jack" and Bettie, his wife.

(2) That if the decision of the Commissioner is not conclusive to that effect, yet that the weight of the evidence introduced upon the trial establishes the fact.

1. The Dawes Commission was a special tribunal having judicial powers. Its judgments were conclusive, in the absence of fraud or



gross mistake or arbitrary action, as to the questions it was authorized to decide, and also as to every issue of law and fact that it was necessary for it to determine in order to decide those questions. *U. S. v. Wildcat*, 244 U. S. 111; *Kimberlin v. Commission to Five Civilized Tribes*, 104 Fed. 653; *Malone v. Alderdice*, 212 Fed. 668; *Folk v. U. S.*, 233 Fed. 177; *Nunn v. Hazelrigg*, 216 Fed. 330; *U. S. v. Atkins*, 268 Fed. 923.

But the decisions of the Commission and the recitals and reports contained therein as to matters whose determination was not indispensable to enable it to adjudicate who should be enrolled, what lands should be allotted to those enrolled and how, are not of judicial or conclusive effect. *Malone v. Alderdice*, *supra*; *Porter v. U. S.*, 260 Fed. 1; *U. S. v. Lena*, 261 Fed. 144. See also *Hegler v. Faulkner*, 153 U. S. 109, 117.

Applying these principles to the case at bar, it is clear that the main question before the Commissioner to the Five Civilized Tribes for determination at the time he rendered the above decision was whether or not the applicant whose case he was considering was entitled to be enrolled under the Act of March 3, 1905. That Act, so far as here material, provided:

"That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this Act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this Act; and to enroll and make allotments to such children."

It is apparent from the wording of the statute that the applicant, to be entitled to enrollment, must have been (1) born subsequent to May 25, 1901; (2) born prior to March 4, 1905; (3) living on March 4, 1905; (4) born to citizens of the Creek Tribe whose enrollment had been approved by the Secretary of the Interior prior to March 3, 1905. The enrollment of the applicant, and especially when followed, as in the case at bar, by a certificate as to allotment and by allotment deeds or patents, would be conclusive that these four matters had been decided favorably to the applicant. Cases *supra*.

But, any findings or recitals on matters other than these, for example, the exact age of the applicant, as in *Malone v. Alderdice*; or the exact names of the parents as in *Porter v. U. S.*; or the marital relationship of the applicant, as in *U. S. v. Lena*, would not be of binding or conclusive effect, because they were not required to be found either by the statute, or as the necessary basis for the decision. And, for like reason, a finding as to the sex of the applicant, or as to the enrollment numbers of the parents of the applicant, or their aliases, would not be conclusive. Such matters might be stated as aids to identify the applicant, but mistakes in such statements would not affect the validity of the patent, nor prevent the applicant from

proving his identity. The two classes of findings must not be confused.

In the decision of the Commissioner there is a recital that the applicant was a child of Jacob Larney (or Green) and Bettie Larney (or Green). There is also a finding that about July 19, 1905, the applicant appeared to be about one year old. This was equivalent to findings that the applicant was born subsequent to May 25, 1901, but prior to March 4, 1905, and was living on the latter date.

The finding upon which appellants rely is this: "The evidence and the records of this office show that said Cheparney Larney is the child of Jacob Larney and Bettie Larney, whose names appear as 'Big Jack' and 'Bettie' on a schedule of citizens by blood of the Creek Nation, approved by the Secretary of the Interior March 28, 1902, opposite Nos. 8291 and 8292 respectively."

The only material fact here found was that the enrollment of the child's parents, already recited as Jacob Larney and Bettie Larney, as citizens of the Creek Tribe, had been approved by the Secretary of the Interior prior to March 3, 1905. This fact was a matter of record with the Commissioner; and this record evidence introduced at the present trial showed that their enrollment was approved by the Secretary of the Interior on March 28, 1902, as the finding alleges. The recital to the effect that Jacob Larney and wife were identical with "Big Jack" and wife, and the recital of the roll numbers, were unnecessary and of no binding effect. Suppose that there had been an actual pending controversy whether the child whose application was being considered was the child of Jacob Larney and wife, or of "Big Jack" and wife. It is clear, since the enrollment of all of these four people had been approved by the Secretary of the Interior prior to March 3, 1905, as shown by the records in evidence, that the Commissioner would not have been called upon to decide the dispute as to parentage; and, if he had decided it, the decision would not be binding. The only finding that was material for the Commissioner to make was that the enrollment of the parents, whoever they were, being citizens of the Creek Tribe, had been approved by the Secretary of the Interior prior to March 3, 1905. Omitting from this finding the surplusage as to the aliases of Jacob Larney and wife and the numbers of the enrollment, the essential part remains that they were citizens of the Creek Tribe, and that their enrollment had been approved by the Secretary of the Interior, on March 28, 1902.

The cases relied upon by appellants and cited above, as to the conclusive effect of findings by the Commissioner, are in harmony with these views. They all hold that findings which are necessary to the adjudication are conclusive. But they also clearly hold that findings which are not necessary to the adjudication are not conclusive.

Appellants themselves abandon the theory that this finding upon which they rely is conclusive in its entirety. Their whole case depends upon a rejection of that part of the finding relating to the identity of Jacob Larney and wife with "Big Jack" and wife. The decision of the Commissioner in our opinion was ambiguous as to the identity of the applicant, and extrinsic evidence was admissible to prove it.

2. The evidence, extrinsic of the decision of the Commissioner, as to the identity of the plaintiff with the applicant who was actually enrolled, is to our minds clear and convincing. The testimony of Posey that the child whom he reported for enrollment was the child of Jacob Larney and wife; found by him at their house; the evidence that this report and Posey's testimony were the basis of the application for the enrollment actually made; that the parents of the child whom Posey reported were unwilling to give the child's name owing to the antagonistic attitude of the maternal grandfather, and that the Commissioner being unable to find out the real name of the child named it "Cheparney Larney;" that the three sons of "Big Jack" were all accounted for on the records of the Commission, two of them having been enrolled and one rejected; that Posey did not visit the house of "Big Jack" and report his children, but such report was made by a different agent; that Jacob Larney whose boy Posey reported was of Arbeka Tullledge Town, and his wife of Hillabee Town, and that the record evidence shows such to be the facts as to plaintiff's father and mother, but not to be the facts as to "Big Jack" and his wife; that the government officials in July, 1907, notified Jacob Larney of the enrollment of his son, and requested him to make a selection of lands; that the government officials again, in May, 1908, notified Jacob Larney of an arbitrary allotment of lands to his son, which is the allotment here in controversy; that the deeds to the allotment were delivered to Jacob Larney for his son, the present plaintiff, and that possession of the lands was taken on behalf of the plaintiff, and that no claim to the land was made by "Big Jack" for years, all establishes clearly that the applicant before the Commissioner was the present plaintiff, the child of Jacob Larney and wife, that he was the person enrolled and that this was so understood by the Commissioner.

The testimony on behalf of the defendants, that the son (now dead) of "Big Jack" was commonly called in his neighborhood Cheparney Larney corroborates rather than weakens the above conclusion, because the Commissioner would not have been likely to state in his decision that the name of the boy whose application he was considering could not be ascertained, if in fact he was considering the case of "Big Jack's" boy, whose name was well known.

We are of opinion that the evidence clearly identified the plaintiff as the person enrolled by the Commissioner and entitled to the allotment of the land in controversy.

Judgment Affirmed.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, DE-  
CEMBER TERM, 1922, MONDAY, APRIL 30, 1923

No. 6164

L. B. NORTON, BETTIE, KIZZIE GOUGE, OKCHUMPULLA, SUCKCHO,  
Sam, and Alberta Gouge, Minors, by Ernest Gouge, Their Legal  
Guardian, and Nogowee, by Jim Hill, His Legal Guardian, Ap-  
pellants,

vs.

CHEPARNEY LARNEY, a Minor, by BENNIE GREEN, His Legal  
Guardian.

Appeal from the District Court of the United States for the Eastern  
District of Oklahoma

DECREE

This cause came on to be heard on the transcript of the record from  
the District Court of the United States for the Eastern District of  
Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and  
decreed by this Court, that the decree of the said District Court, in  
this cause, be, and the same is hereby, affirmed with costs; and that  
Cheparney Larney, a minor, by Bennie Green, his legal guardian,  
have and recover against L. B. Norton, Bettie, Kizzie Gouge, Okchum-  
pulla, Suckcho, Sam and Alberta Gouge, minors, by Ernest Gouge,  
their legal guardian, and Nogowee, by Jim Hill, his legal guardian,  
the sum of twenty dollars for their costs herein and have execution  
therefor.

April 30, 1923.

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IN U. S. SUPREME COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed July 13, 1923

To the Honorable William H. Taft, Chief Justice, or any Associate  
Justice of the Supreme Court of the United States:

Come now the appellants by their solicitors, and complain that in  
the record and proceedings, and also in the rendition of the decree  
of the United States Circuit Court of Appeals for the Eighth Circuit,  
sitting at Saint Louis, in the State of Missouri, in the above styled  
and numbered cause, on the 30th day of April, A. D. 1923, affirm-  
ing the decree of the United States District Court for the Eastern  
District of Oklahoma in said cause, manifest error has intervened  
to the great damage of the petitioners; that the jurisdiction of the

District Court of the United States for the Eastern District of Oklahoma, if there were jurisdiction in that Court of this cause, depended upon the fact that the matter in controversy exceeded, exclusive of interest and costs, the sum and value of Three Thousand Dollars (\$3,000), and that the suit arose under the constitution or laws of the United States or treaties made under their authority; that the amount involved therein and the matter under consideration exceeds the sum of One Thousand Dollars (\$1,000.00) besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final; and for the purpose of showing that said matter in controversy exceeds the sum of One Thousand Dollars (\$1,000.00) besides costs, petitioners herein attach as Exhibit "A" and make a part hereof a stipulation entered into between the solicitors of record for the parties to this cause, by which it is stipulated and agreed that the lands involved and the amount in controversy does exceed the sum of One Thousand Dollars (\$1,000.00) besides costs.

Wherefore, petitioners pray for an allowance of appeal to the end that the cause may be carried to the Supreme Court of the United States, and petitioners pray for such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

Nathan A. Gibson, Joseph L. Hull, Thomas L. Gibson, Glenn R. Homer, Solicitors for Petitioners.

Appeal allowed and bond fixed in the sum of \$500.00, conditioned as the law directs, this the 11 day of July, A. D. 1923.

Kimbrough Stone, Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

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#### IN U. S. CIRCUIT COURT OF APPEALS

STIPULATION AS TO THE AMOUNT INVOLVED UPON APPEAL—Filed  
July 13, 1923

It is stipulated and agreed by and between the parties to this cause, by and through their solicitors of record, that the land described in the bill of complaint herein, to-wit:

The East Half (E./2) of the Northwest Quarter (N. W./4) of Section Twenty-nine (29), and the Northeast Quarter (N. E./4) of the Northeast Quarter (N. E./4) and the Southwest Quarter (S. W./4) of the Northeast Quarter (N. E./4) of Section Thirty (30), Township Seventeen (17) North, Range Nine (9) East, in Creek County, Oklahoma;

is of a value in excess of One Thousand Dollars (\$1,000.00); and that the matter in controversy in this cause exceeds the sum of One Thousand Dollars (\$1,000.00) besides costs.

Dated this 9th day of July, A. D. 1923.

Nathan A. Gibson, Joseph L. Hull, Glenn R. Homer, Solicitors of Record for Appellants. Clark Nichols and Horace B. Reubelt, Solicitors of Record for Appellees Cheparney Larney, a Minor, and Bennie Green, His Legal Guardian.

[File endorsement omitted.]

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IN U. S. CIRCUIT COURT OF APPEALS  
ASSIGNMENTS OF ERROR—Filed July 13, 1923

Come now the appellants in the above entitled cause and file the following assignments of error, upon which they will rely upon their prosecution of the appeal in the above entitled cause from the decree made by the Honorable United States Circuit Court of Appeals for the Eighth Circuit, on the 30th day of April, A. D. 1923.

1

The said Court erred in affirming the decree of the United States District Court for the Eastern District of Oklahoma rendered in this cause, and in holding that the said United States District Court for the Eastern District of Oklahoma had jurisdiction to render its judgment in this cause, for the reason that the bill filed in this cause failed to contain any allegations sufficient to vest said District Court of the United States for the Eastern District of Oklahoma with jurisdiction to render a final decree herein, and for the reason that the record in this cause does not show that said District Court had jurisdiction thereof.

2

V The said United States Circuit Court of Appeals for the Eighth Circuit erred in refusing to hold that the enrollment record of the person enrolled on the New Born Creek Indian roll opposite roll number 1287 as Cheparney Larney was conclusive of the fact that such person was the child of Big Jack, enrolled on the Creek Indian roll opposite roll number 8291, and Bettie, enrolled on the Creek Indian roll opposite roll number 8292.

3

The said United States Circuit Court of Appeals for the Eighth Circuit erred in holding that the decision of the Commissioner to the Five Civilized Tribes in the matter of the enrollment of Cheparney

Larney did not conclusively identify the person enrolled as Cheparney Larney upon the New Born Creek Indian roll opposite number 1287 as the child of Big Jack, enrolled on the Creek Indian roll opposite number 8291, and Bettie, enrolled on the Creek Indian roll opposite number 8292.

4

The said United States Circuit Court of Appeals for the Eighth Circuit erred in finding and holding that the appellee, Cheparney Larney, was the person enrolled by the Commissioner to the Five Civilized Tribes upon the New Born Creek Indian roll opposite roll Number 1287.

Wherefore, the appellants pray that said decree be reversed and the cause remanded with directions that said bill be dismissed at the cost of the appellee, or for such other relief as to the Court may seem proper.

Nathan A. Gibson, Joseph L. Hull, Thomas L. Gibson, Glenn R. Homer, Solicitors for Appellants.

[File endorsement omitted.]

BOND ON APPEAL TO SUPREME COURT U. S.—Filed July 13, 1923;  
for \$500.00; approved, Stone, J. [omitted in printing]

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH  
CIRCUIT

[Title omitted]

NOTICE TO THE CLERK TO MAKE TRANSCRIPT OF RECORD AND AC-  
CEPTANCE OF SERVICE—Filed July 16, 1923

To the Clerk of said Court:

You are hereby requested to make a transcript of the record in the above entitled cause, to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript the following, and no other, papers or exhibits, to-wit:

1. The transcript of record filed in this cause.
2. The decision or decree of the United States Circuit Court of Appeals entered in this cause.
3. Petition for appeal to the United States Supreme Court.
4. Assignments of error.



5. Order allowing appeal.
6. Bond on appeal.
7. Citation and acceptance of service.
8. This præcipe and acceptance of service thereon.
9. Certificate of the Clerk.
10. Opinion of the United States Circuit Court of Appeals in this cause.

Nathan A. Gibson, Joseph L. Hull, Thomas L. Gibson, Glenn R. Homer, Solicitors for Appellants.

The undersigned solicitors for the appellees, Cheparney Larney, a minor, and Bennie Green, his legal guardian, hereby acknowledge service of the foregoing præcipe; and the said solicitors for the said appellees hereby agree that the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit shall make a transcript of the record in the above entitled cause to be filed in the Supreme Court of the United States, and the same shall contain a copy of the parts of the record specifically named in said præcipe, and no other.

Dated this 13th day of July, A. D. 1923.

H. B. Reubelt, Clark Nichols, Solicitors for Appellees, Cheparney Larney, a Minor, and Bennie Green, His Legal Guardian.

[File endorsement omitted.]

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IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

CITATION AND SERVICE—Filed July 16, 1923

The President of the United States of America to Cheparney Larney, a Minor, and Bennie Green, His Legal Guardian, Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty (30) days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein L. B. Norton, Bettie, Kizzie Gouge, Okchum-pulla, Suckcho, Sam and Alberta Gouge, minors, by Ernest Gouge, their legal guardian, and Nogowee, by Jim Hill, his legal guardian, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, shall not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this the 11th day of July, A. D. 1923.

Kimbrough Stone, Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Due and legal service of the foregoing citation upon Cheparney Larney, a minor, and Bennie Green, his legal guardian, the appellees, is hereby acknowledged to have been made on this the 13th day of July, A. D. 1923.

H. B. Reubelt, Clark Nichols, Solicitors of Record for Cheparney Larney, a Minor, and Bennie Green, His Legal Guardian.

[File endorsement omitted.]

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UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the Notice to the Clerk to prepare Transcript, in a certain cause in said Circuit Court of Appeals wherein L. B. Norton, et al., were Appellants, and Cheparney Larney, a minor, by Bennie Green, his legal guardian, was Appellee, No. 6164, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

I do further certify that on the thirteenth day of July, A. D. 1923, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the Eastern District of Oklahoma.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth

Circuit, at office in the City of St. Louis, Missouri, this first day of August, A. D. 1923.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. [Seal of United States Circuit Court of Appeals, Eighth Circuit.]

Endorsed on cover: File No. 29,804. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 494. L. B. Norton, Bettie, Kizzie Gouge, Okchumpulla, et al., appellants, vs. Cheparney Larney, a minor, and Bennie Green, his legal guardian. Filed August 10th, 1923. File No. 29,804.

